Audrey Van Winkle

Vanwinkle.a24@law.wlu.edu | 571-236-3932 | 309 S. Main Street, Lexington, VA

Writing Sample

The attached writing sample is an excerpt of my Law Review Student Note: *Courts of Last Resort? How Virginia Statute Prevents Indigent Tenants from Accessing Appellate Review.* I received limited editorial feedback from the Law Review's Executive Editors which I incorporated into this piece.

The Note explores the validity of excluding tenants from accessing the indigent appeal bond waiver of Section 16.1-107 under both the Virginia and Federal Constitutions; examines the barrier the appeal bond poses to fair and equal access to the court system; and proposes legislative, state and federal judicial solutions that would allow indigent tenants equitable access to Circuit Court and appellate review.

I have excerpted Part II, which focus on civil appellate rights both federally and in Virginia, and Part III, which focuses on the right to a jury trial in civil cases both federally and in Virginia. I am happy to provide a full copy of my Note upon request.

II. THE RIGHT TO APPEAL

The Supreme Court has repeatedly disclaimed the existence of constitutional protections for civil appeals.[87] The Supreme Court has been able to disclaim the existence of a constitutional right to appeal because each state has its own civil appellate protections in place via statute or state constitution.[88] Virginia was the last state to do so in 2022 when it created the right to appeal to the Virginia Court of Appeals.[89]

A. *The Right to Appeal: Due Process and Equal Protection Protections*

Although no Federal constitutional right to appeal exists,[90] the Supreme Court has extended Due Process and Equal Protection Clause protections to indigent appellants' ability to access appellate review in certain contexts.

Limited Due Process and Equal Protection Clause protections exist for indigent litigants seeking to proceed in forma pauperis—seeking to proceed without paying costs.[91] The ability of an indigent litigant "to proceed in forma pauperis is grounded in a common law

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87 *See* Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 31 n.4 (1987) (Stevens, J., concurring) (disclaiming constitutional protection for civil appeals); Griffin v. Illinois, 351 U.S. 12, 18 (1956) ("It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."); Cobbledick v. United States, 309 U.S. 323, 325 (1940) ("[T]he right to a judgment from more than one court is a matter of grace and not a necessary ingredient of justice . . . ."). *But see* Cassandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. REV. 1219, 1233 (2013) (observing that because "most jurisdictions granted a statutory right of appeal . . . statements [disclaiming appellate constitutional protections are] almost always dicta.").

88 Robertson, *supra* note 87, at 1234.

89 *See* VA. CODE ANN. § 17.1-405 ("Any aggrieved party may appeal to the Court of Appeals from . . . any final decision of a circuit court.").

90 *But see* Robertson, *supra* note 87, at 1241–45 (arguing that procedural due process protections should be extended to appellate review via application of the Mathews test).

91 *See infra* footnotes 92–101 and accompanying text.

right of access to the courts and constitutional principles of due process."[92] Despite cases from the Warren Court that suggest that discrimination on the basis of wealth (or lack thereof) would be suspect under the Equal Protection Clause,[93] jurisprudence since *San Antonio Independent School District v. Rodriguez*[94] asserts that the poor are neither a quasi-suspect nor suspect class under the Equal Protection Clause of the Fourteenth Amendment.[95]

Due Process protections exist in a limited manner for indigent litigants on the basis of fundamental rights. The Court examined due process in the context of access to courts in *Boddie v. Connecticut*.[96] The central holding being that in cases involving indigent litigants: "Due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard."[97] In a *Boddie* concurrence, Justice Brennan recognized a "constitutional right of poor people to access civil

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92 C.S. v. W.O., 230 Cal. App. 4th 23, 30 (2d Dist. 2014).

93 *See* Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 668 (1966) (invalidating a poll tax on the basis that using wealth or affluence as a qualification to vote was impermissible discrimination); Douglas v. People of State of Cal., 372 U.S. 353, 355 (1963) ("[T]here can be no equal justice where the kind of an appeal a man enjoys depends on the amount of money he has." (internal citations omitted)); Griffin v. Illinois, 351 U.S. 12, 17 (1956) ("a State can no more discriminate on account of poverty than on account of religion, race, or color.").

94 411 U.S. 1 (1973) (upholding a Texas state financing scheme that funded education in wealthier districts at the expense of poorer school districts).

95 *See* Harris v. McRae, 448 U.S. 297, 323 (1980) ("[T]his Court has held repeatedly that poverty, standing alone, is not a suspect classification."(citations omitted)). *But see* Henry Rose, *The Poor As A Suspect Class Under the Equal Protection Clause: An Open Constitutional Question*, 34 NOVA L. REV. 407, 419–21 (2010) (positing both that the poor likely meet factors required to be considered a suspect class and that the Supreme Court has never actually applied these factors to the question of the poor as a suspect class).

96 401 U.S. 371 (1971).

97 *Id.* at 377.

courts to vindicate their legal rights."[98] Yet, *Boddie* did not establish an independent fundamental right to access court without paying fees. Instead, the decision rested upon the underlying case implicating fundamental rights related to the dissolution of marriage.[99]

Supreme Court decisions requiring litigants proceeding in forma pauperis access to appellate review rest on fundamental rights analysis. If the indigent appellant's interest is not fundamental, a state may require the payment of court fees and costs by indigent litigants.[100] Thus, courts apply rational basis scrutiny to most due process claims involving appellate review and indigent tenants.

Applying a rational basis to due process and equal protection claims, the Supreme Court has recognized some procedural protections for indigent tenants once access to appellate review is afforded by state statute or state constitution.[101] For example, while

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98 Henry Rose, *Why Do the Poor Not Have a Constitutional Right to File Civil Claims in Court Under Their First Amendment Right to Petition the Government for a Redress of Grievances?*, 44 SEATTLE U. L. REV. 757, 763 (2021); *see also Boddie*, 401 U.S. at 387–88 (Brennan, J., concurring in part)("It is an unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee. . . . The right to be heard in some way at some time extends to all proceedings entertained by courts.").

99 *See Boddie*, 401 U.S. at 382–83 (emphasizing the opinion of the court applied only to indigent persons seeking divorce).

100 *See* Ortwein v. Schwab, 410 U.S. 656, 660 (1973) (per curiam) (upholding $25 filing fee for civil appeals required for an indigent litigant to appeal the reduction of his welfare benefits did not violate due process or equal protection clauses of the Fourteenth Amendment); Bernstein v. State of N. Y., 466 F. Supp. 435, 438 (S.D.N.Y.), *aff'd sub nom.* Bernstein v. State, 614 F.2d 1285, (2d Cir. 1979) (upholding a $10 fee for filing notice of appeal for review of a verdict reached after *a full trial before a jury* as not violative of an indigent appellant's Fourteenth Amendment rights).

101 *See* Griffin v. Illinois, 351 U.S. 12 (1956) (holding that that an Illinois law that required indigent criminal appellants to purchase a trial transcript to access appellate review violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment); *see also* Lindsey v. Normet, 405 U.S. 56, 78 (1972) ("When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.").

eviction appeal bonds generally do not violate the Equal Protection and Due Process clauses of the Fourteenth Amendment, the Supreme Court struck down an Oregon statute requiring a double-bond for eviction cases on Fourteenth Amendment grounds because it found the heightened appeal bond requirement to be arbitrary and irrationally discriminatory, in other words, lacking a rational basis, against the tenant appellants.[102] While the right to appellate review is not an essential requirement of due process, a state that provides a means of appeal may not put limitations on it that are discriminatory or arbitrary.[103] Appeal bonds do not violate due process so long as the bond is reasonable and not excessive.[104] A 1983 challenge to Virginia's old appeal bond statute requiring a bond for "rent which has accrued and may accrue but not to exceed one year's rent" was found not to violate the Equal Protection Clause by the Fourth Circuit.[105] The Court's reasoning suggested that the limit of a year's rent placed on the Virginia appeal bond was reasonably related to the valid state objectives of "guarding

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102 *See Lindsey*, 405 U.S. at 78 (1972)

> The discrimination against the poor, who could pay their rent pending an appeal but cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The nonindigent FED appellant also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon. The discrimination against the class of FED appellants is arbitrary and irrational, and the double-bond requirement of ORS s 105.160 violates the Equal Protection Clause.

103 16D C.J.S. Constitutional Law § 1997.

104 *Lindsey*, 405 U.S. at 78 (1972).

105 Letendre v. Fugate, 701 F.2d 1093, 1095 (4th Cir. 1983).

> The Virginia statutory requirement of an appeal bond for rent which has accrued and may accrue but not to exceed one year's rent is well within the language of Lindsey permitting a bond to guard a damage award already made or to insure a landlord against loss of rent if the tenant remains in possession.

a damage award already made" and "insuring a landlord against loss of rent if the tenant remains in possession."[106] Nor was the appeal bond amount discriminatory nor arbitrary.[107]

For indigent appellants, courts apply rational basis scrutiny to most Equal Protection or Due Process claims involving the right to appellate review.

B. *The Right to Appeal in Virginia*

In Virginia, absent statutory authority or constitutional mandate, no party has a right to a de novo appeal of a General District Court judgment to Circuit Court.[108] The Virginia Supreme Court instructs that the "statutory procedural prerequisites must be observed" before a de novo appeal is taken from General District Court to Circuit Court.[109] For indigent tenants, this means that an appeal bond must be posted according to statute before appealing de novo to Circuit Court as there is no statutory authority to appeal to Circuit Court in cases of unlawful detainer without first paying the appeal bond.[110] Without statutory

106 *Letendre*, 701 F.2d at 1095 (4th Cir. 1983).

107 *Letendre*, 701 F.2d at 1095 (4th Cir. 1983).

108 *See* Robert and Bertha Robinson Fam., LLC v. Allen, 810 S.E.2d 48, 56 (Va. 2018)

> "In case after case" involving appeals from courts not of record, "we have in clear, unequivocal, and emphatic language repeatedly said that '[t]he right of appeal is statutory and the statutory procedural prerequisites must be observed.' " Covington Virginian, Inc., 182 Va. at 543, 29 S.E.2d at 409 (citation omitted)."The right of appeal is statutory," Brooks v. Epperson, 164 Va. 37, 40, 178 S.E. 787, 788 (1935), because it is "a process of civil law origin," Tyson, 116 Va. at 252, 81 S.E. at 61 (citation omitted).This history directly impacts our analysis of the issue in this case by establishing the first premise: Absent a statutory authorization or a constitutional mandate, no party has a right to a de novo appeal of the GDC's judgment in the circuit court. Customary practices, by themselves, cannot create this right.

109 *Id.*

110 *See* VA. CODE ANN. §§ 16.1-107; 8.01-129.

authorization, the right of an indigent tenant to appeal de novo without posting an appeal bond must rest upon a constitutional mandate.[111]

The Virginia Constitution holds sacred access to a jury in civil trials to citizens of the Commonwealth.[112] This constitutional mandate supports the idea that indigent tenants hold a right to a de novo appeal to Circuit Court—where a tenant can request a jury trial—without satisfying the statutory requirement of posting an appeal bond. [113] Part III of this Note explores the constitutional rights and common law access to a jury in trespass, ejectment, unlawful detainer actions, as well as actions related to the payment of rents.[114]

III. THE RIGHT TO JURY TRIAL IN CIVIL CASES

A. *Historical Origins of the American Civil Jury Trial*

The right to a jury in civil trials is enshrined in both the Federal[115] and Virginia Constitution.[116] American colonists adopted and adapted the English practice of the civil jury trial.[117] The use of jury trial in civil cases was a "familiar and well-ensconced feature of pre-1787 political life."[118] In the years preceding the American Revolution, civil juries were

111 *See infra* Part III.

112 *See* VA CONST. ART. 1, § 11 (" . . . in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.").

113 *See infra* Part III.

114 *See infra* Part III.

115 *See* U.S. CONST. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .").

116 *See* VA CONST. ART. 1, § 11 (" . . . in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.").

117 ELLEN E. SWARD, THE DECLINE OF THE CIVIL JURY 90 (2001) ("But jury practice in colonial America varied considerably among the colonies and between the various colonies and England.").

118 Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 653 (1973).

viewed as an important tool to attack English interests in Colonial America.[119] English authorities would attempt to circumvent the power of American jurors by moving controversial cases from courts of law into chancery and admiral courts.[120] Colonial legal writers and political theorists, drawing from Blackstone, were of the opinion that trial by jury was an important right of freemen.[121] Blackstone posited that the civil jury was a check on the privileged and aristocratic judges who "will have frequently an involuntary bias towards those of their own rank and dignity."[122] Colonial and early Americans advanced the idea of the civil jury for both ideological and pragmatic reasons. Civil juries were viewed as protection for local debtors;[123] a check on judges that received little formal legal training;[124] and as a way to frustrate unwise legislative or administrative actions.[125]

All thirteen original states retained civil juries via state constitution, statute, or by continuation of colonial judicial practices.[126] In 1776, the Virginia Declaration of Rights, a precursor to the Bill of Rights, enshrined the right to a jury in civil cases within the

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119 SWARD, *supra* note 117, at 90–91 ("Civil laws whose intent or effect was to generate revenue for English interests were under attack by juries that refused to enforce them.")

120 *See* SWARD, *supra* note 117, at 91 (noting that these were equitable courts where a jury was not required).

121 Wolfram, *supra* note 118, at 653–54.

122 *See* SUJA A. THOMAS, THE MISSING AMERICAN JURY 19 (2016) (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 314–15, 373, 395).

123 *See* SWARD, *supra* note 117, at 91–92 (suggesting that Anti-federalists, who were more likely to be debtors, sought a civil jury to weaken debt collection within federal courts).

124 *See* SWARD, *supra* note 117, at 93 (discussing the poor legal training of colonial judges).

125 *See* SWARD, *supra* note 117, at 93 (noting the important role of revolution-era civil juries played in frustrating "oppressive British laws").

126 *See* Wolfram, *supra* note 118, at 655 ("The right to trial by jury was probably the only one universally secured by the first American state constitutions . . . ." (quoting L. LEVY, FREEDOM OF SPEECH AND PRESS IN EARLY AMERICAN HISTORY—LEGACY OF SUPPRESSION 281) (1963 reprint)).

commonwealth.[127] Every subsequent version of the Virginia Constitution has included substantially similar language.[128] In 1791, the ratification of the Seventh Amendment guaranteed a right to a civil jury in certain federal proceedings.[129]

B. *The Federal Right to Jury Trial in Civil Trials.*

The Seventh Amendment preserves the right to a jury in suits at common law. This excludes equitable and admirable remedies from the right to a civil jury.[130] The exclusion of equitable remedies from civil juries was complicated by the merger of law and equity in federal courts.[131] Despite the complications that arose from the merger of law and equity, ample direction from the Supreme Court exists on how to properly perform an analysis on the existence of a right to a jury trial in a civil case brought before federal court, or what counts as "suits in common law".[132]

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127 *See* VA. DECLARATION OF RIGHTS of 1776, art. 11. ("That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.").

128 *See* A.E.D. Howard, 1 *Commentaries on the Constitution of Virginia* 244–45 (1974) (noting the minimal changes in article 11 of the Virginia Constitution of 1776, of 1851, of 1864, of 1870, of 1902, of 1928, and the Virginia Constitution of 1971).

129 *See* U.S. CONST. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .")

130 *See* Samuel Bray, *Equity, Law, and the Seventh Amendment*, 100 TEXAS L. REV. 487, 471 (2022) (discussing the boundaries of the Seventh Amendment).

131 *See, generally*, Eric J. Hamilton, *Federalism and The State Civil Jury Rights*, 65 STAN. L. REV. 815 (discussing the evolution of the right to a civil jury after the merger of law and equity).

132 *See, e.g.*, Wooddell v. Int'l Bhd. of Elec. Workers, Loc. 71, 502 U.S. 93, 98 (1991) (holding a union member was entitled to a jury trial on a LMRDA cause of action); Chauffeurs Loc. No. 391 v. Terry, 494 U.S. 558, 564, 573 (1990) (holding that the remedy of backpay is legal in nature and finding respondents are entitled to a jury trial); Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 49 (1989)("Respondent's fraudulent conveyance action plainly seeks relief traditionally provided by law . . . the Seventh Amendment guarantees petitioners a jury trial upon request).

The general rule is that the court should consider whether a claim is analogous to one that would have been brought in law or equity in 1791, and whether the remedy sought is legal or equitable.[133] A historical inquiry is mandated by language of the Seventh Amendment.[134] The type of historical inquiry requires more than a surface level inquiry into historical materials, instead it requires federal judges have a deep familiarity with legal history to both understand and apply the anachronisms of law and equity in the common law system.[135]

C. *Non-incorporation of the Seventh Amendment.*

While the Seventh Amendment preserves the right to a jury trial in federal courts, the Supreme Court has consistently held that the Seventh Amendment is not incorporated via the Fourteenth amendment to the states.[136] The Supreme Court has not accepted the theory of "total incorporation" suggested by Justice Black in which the first eight amendments are incorporated en mass to the states via the Fourteenth amendment.[137] The Supreme Court set a new framework for determining whether a enumerated right should be incorporated to the state via the fourteenth amendment in *McDonald v. City of Chicago* which

133 Bray, *supra* note 130, at 468.

134 Bray, *supra* note 130, at 477.

135 Bray, *supra* note 130, at 487.

136 *See* Minneapolis & St. L.R. Co. v. Bombolis, 241 U.S. 211 (1916) (declining to incorporate the Seventh Amendment to the states); Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996) (same); Brady v. Southern Ry. Co., 320 U.S. 476 (1943) (same); Mountain Timber Co. v. State of Washington, 243 U.S. 219 (1917) (same); Justices v. Murray, 76 U.S. 274 (1869) (same).

137 *See* McDonald v. City of Chicago, Ill., 561 U.S. 752, 867 (2010) ("We have never accepted a "'total incorporation"' theory of the Fourteenth Amendment, whereby the Amendment is deemed to subsume the provisions of the Bill of Rights en masse.")(Stevens, J., dissenting); *see also* Suja A. Thomas*, Nonincorporation: The Bill of Rights After McDonald v. Chicago*, 88 NOTRE DAME L. REV. 159 for a discussion on changes to incorporation theory post-McDonald.

incorporated the Second Amendment to the states.[138] This framework requires a originalist analysis of whether the amendment is both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition."[139]

Following the reasoning in *McDonald*, the Supreme Court has most recently incorporated the excessive fines clause from the Eighth Amendment to the states in *Timbs v. Indiana*.[140] In incorporating the excessive fines clause of the Eighth Amendment,[141] the Court found that the protection against excessive punitive economic sanctions secured by the Clause satisfies the originalist analysis set forth in *McDonald*.[142] In both *McDonald* and *Timbs*, the Court made historical arguments reaching back to the Magna Carta[143] and Blackstone's Commentaries on the Laws of England[144] to justify that the protections granted by the Second Amendment and the excessive fines clause are both "fundamental to our

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138 *See* McDonald, 561 U.S. at 791 (Alito, J.) ("A provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal government and the States.").

139 *Id.* at 767.

140 139 S. Ct. 682, 688–91 (2019) (incorporating the Excessive Fines Clause).

141 U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

142 *Timbs*, 139 S. Ct. at 687 (quoting McDonald, 561 U.S., at 767).

143 *See, e.g.*, *id.* at 687 ("The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement . . . .'" (internal citations omitted)).

144 *See, e.g.*, McDonald, 561 U.S. at 769 ("Founding-era legal commentators confirmed the importance of the right to early Americans. St. George Tucker, for example, described the right to keep and bear arms as 'the true palladium of liberty' and explained that prohibitions on the right would place liberty 'on the brink of destruction.'" (quoting 1 Blackstone's Commentaries, Editor's App. 300 (S. Tucker ed. 1803))).

scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition."[145] Following the incorporation in *Timbs*, only a handful of jury rights secured federally by the Fifth,[146] Sixth,[147] and Seventh Amendment[148] and protections against the quartering of soldiers[149] remain unincorporated to the states.[150]

Applying this same *McDonald* framework, some legal commentators believe the Seventh Amendment should be incorporated to the states via the Fourteenth Amendment.[151] After all, a civil jury fulfills both prongs of the originalist analysis. A civil jury is "fundamental to our scheme of ordered liberty." Supreme Court jurisprudence suggests that the Seventh Amendment is fundamental[152] and essential to a fair trial.[153]

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145 *Id.* at 764.

146 *See* U.S. CONST. amend. V (securing the right to indictment by a grand jury federally).

147 *See* U.S. CONST. amend. VI (securing the right to unanimous jury).

148 *See* U.S. CONST. amend. VII (securing the right to a jury in civil cases federally)

149 *See* U.S. CONST. amend. III ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.").

150 *See* Suja A. Thomas, *What Timbs Does Not Say*, GEO. WASH L. REV. ON THE DOCKET (March 7, 2019), https://www.gwlr.org/what-timbs-does-not-say/ (discounting the nonincorporation of the Third Amendment and noting the reluctance of the Court to incorporate jury rights).

151 *See* Thomas, *supra* note 150 (arguing that while the Seventh Amendment should be incorporated under *Timbs* or *McDonald*, this is unlikely to occur).

152 *See* Robert S. Peck & Erwin Chemerinsky, *The Right to Trial by Jury As A Fundamental and Substantive Right and Other Civil-Trial Constitutional Protections*, 96 OR. L. REV. 489, 557 (2018) (citing to Hodges v. Easton, 106 U.S. 408, 412 (1882); Jacob v. New York City, 315 U.S. 752, 752-53 (1942); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 338 (1979) (Rehnquist, J., dissenting) ("fundamental to our history and jurisprudence")).

153 *See* Peck & Chemerinsky, *supra* note 152, at 557 (citing to Simler v. Conner, 372 U.S. 221, 222 (1963); Byrd v. Blue Ridge Rural Elec. Coop., Inc., 356 U.S. 525, 537-39 (1958)).

A civil jury is also "deeply rooted in this Nation's history and tradition."[154] The right to a jury trial is believed to be devolved from the protections granted in the Magna Carta.[155] The jury was viewed by Blackstone as the "palladium" of English liberties,[156] a view shared by the framers of the Constitution.[157] American colonists embraced the civil jury and it was "as universally established in the colonies as in the mother country."[158] Civil jury right remained strong from the earliest days of the Republic through the adoption of the Fourteenth Amendment.[159] Under modern selective incorporation doctrine, the Seventh Amendment should be incorporated to the states through the Due Process clause of the Fourteenth Amendment.

Despite *McDonald* and *Timbs*, incorporation of the Seventh Amendment does not appear to be imminent—or even on the distant horizon.[160] Because the *McDonald* framework

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154 *Id.*

155 *See* Howard, *supra* note 128, 243–44 (1974) (tracing the early history of civil jury trial by jury in the English common law).

156 *Id.*

157 *See supra* Part III.A for a discussion of the important role of the jury in colonial United States.

158 Peck & Chemerinsky, *supra* note 152, at 557 (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 165 at 117 (Melville M. Bigelow ed., Little, Brown, and Co. 5th ed. 1905) (1833)).

159 *See* Peck & Chemerinsky, *supra* note 152, at 557–68

> [A]t the time the Fourteenth Amendment was ratified, the Constitutions of "[t]hirty-six out of thirty-seven states ... guaranteed the right to jury trials in all civil or common law cases." By comparison, as the Supreme Court noted in McDonald, only "22 of the 37 States in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms."

160 *See* Thomas, *supra* note 150 ("[W]ill the [civil jury] rights be incorporated? It's unlikely. . . . [T]he Court itself pointed out that stare decisis might stand in the way of incorporation of the remaining rights. This signal from the Court may prevent petitions for certiorari from being filed on those issues."); *see also* Andrew Cohen & Suja Thomas, *Is There Any Way to Resuscitate the Seventh Amendment Right to Jury Trial?* BRENNAN CTR. FOR JUST. (Nov. 28, 2022),

has yet to be applied to the Seventh Amendment,[161] the current jurisprudence declines to extend the right to jury trial to claims brought in state courts.[162] The Fourth circuit has specifically held that because the Seventh Amendment has not been incorporated, the appeal bond provision requiring indigent tenants to post appeal bonds to access a circuit court, and thus a civil jury, does not violate Due Process or Equal Protection Clauses of the Fourteenth Amendment.[163] Therefore, looking to the Virginia state constitution and not federal Constitution is the appropriate approach for determining whether a right to civil jury exists for indigent tenants.[164]

D. *Virginia State Constitution Right to Jury Trial in Civil Trials*

The Virginia right to civil jury trial is more expansive facially than the federal right.[165] Yet, the Virginia jurisprudence is very similar to the federal jurisprudence.[166] The general rule is that an action must have had the right to a jury trial in 1776 when the Virginia Constitution was adopted.[167] In applying this jurisprudence, courts have noted that "the right

https://www.brennancenter.org/our-work/analysis-opinion/there-any-way-resuscitate-seventh-amendment-right-jury-trial (discussing the jurisprudence of Justices Kavanaugh, Gorsuch, and Barrett as unsympathetic toward civil jury rights to the same extent as criminal jury rights).

161 *See* Peck & Chemerinsky, *supra* note 152, at 556 (noting [lower] courts have adhered to the result dictated by nineteenth century precedent on Seventh Amendment incorporation and are awaiting a definitive ruling from the Supreme Court that the non-incorporation precedents are overruled while the Supreme Court has explicitly recognized "the Seventh Amendment's civil jury requirement jurisprudence long predate the era of selective incorporation").

162 *See* cases cited *supra* note 136.

163 *See* Letendre v. Fugate, 701 F.2d 1093 (4th Cir. 1983) (seeking a declaratory judgment that Virginia Code § 8.01–129 violated the Fourteenth Amendment).

164 *See infra* Part III.D.

165 *Compare* VA CONST. ART. 1, § 11 *with* U.S. CONST. amend. VII.

166 *See* Howard, *supra* note 128, at 244.

167 *See* REVI, LLC v. Chicago Title Ins. Co., 776 S.E.2d 808, 813 (2015)

to a civil jury provided by the state constitution is equivalent to the federal seventh amendment right."[168]

Whether an action has a right to jury depends on whether that right had been created by statute or whether the action had a common law right the jury in 1776.[169] For the guarantee of a jury trial to attach, the action should bear characteristics of "traditional common law proceedings."[170] This can be evidenced by actions for monetary damages, compensatory or punitive damages, attempts to adjust the rights and liabilities of antagonistic litigants, or requests for retrospective relief.[171] Alternatively, *Ingram v. Commonwealth*[172] suggests that a statute creating a cause of action that appears to be "a novelty of statutory law" that is in-fact based in ancient common law writs may be sufficient to establish a common law right to a jury.[173] Like in federal test, the state court should consider whether a claim is analogous to one that would have been brought in law or equity in 1776, and whether the remedy sought is legal or equitable. If the claim is analogous to a common law claim that existed in 1776, the right to jury attaches.

Article I, Section 11 of the Constitution of Virginia provides "[t]hat in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred." Yet, the right to a jury trial does not apply "to those proceedings in which there was no right to jury trial when the Constitution was adopted."

168 Boyd v. Bulala, 647 F. Supp. 781, 789 (W.D. Va. 1986).

169 Ingram v. Commonwealth, 741 S.E.2d 62, 68 (Va. Ct. App. 2013).

170 *Id.* at 68.

171 *Id.* at 68–69 (listing the traditional characteristics of common law actions).

172 *Id.*

173 *See id.* (asserting that while the code section in question had facial parallels in ancient common law writs, those parallels had little in common with the actual purpose of the code in question.)

Applicant Details

First Name	**Tatiana**
Last Name	**Varanko**
Citizenship Status	**U. S. Citizen**
Email Address	**tatiana.varanko@gmail.com**
Address	**Address** Street **4130 Garrett Road, Apartment 731** City **Durham** State/Territory **North Carolina** Zip **27707** Country **United States**
Contact Phone Number	**203-721-0040**

Applicant Education

BA/BS From	**George Washington University**
Date of BA/BS	**May 2018**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 12, 2024**
LLM From	**Duke University School of Law**
Date of LLM	**May 12, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Duke Journal of Comparative & International Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Buell, Sam
buell@law.duke.edu
919-613-7193

Helfer, Larry
Helfer@law.duke.edu
919-613-8573

Dunlap, Charles
dunlap@law.duke.edu
919-613-7233

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tatiana Varanko
4130 Garrett Road
Apartment 731
Durham, NC 27707

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my interest in a clerkship position for the 2024-25 term or any term thereafter. I am a rising third-year law student at Duke Law School. I expect to receive my J.D. and LL.M. in International and Comparative Law in May of 2024 and will be available to clerk any time after that date.

Through my experiences before and during law school, I gained the legal research, writing, communication, and time management skills necessary to be an effective clerk. Before law school, I served as the Program Specialist for the Federal Judicial Center's International Judicial Relations Office. In this position, I worked with judges and legal professionals from the U.S. and around the world to plan and execute judicial education exchanges and technical assistance projects. I also researched, wrote, and edited content for a microsite aimed at familiarizing U.S. judges with civil and hybrid law jurisdictions. Last summer, I continued to develop my analytical skills at the Constitutional Court of Hungary.

Currently, I serve as a research assistant to Professor Laurence R. Helfer, an Article Editor for the *Duke Journal of Comparative and International Law*, and a student fellow for the Bolch Judicial Institute's *Judicature* publication. In these roles, I have conducted research, written memoranda on discrete issues, and provided editorial support. This summer, my work for Professor Helfer includes supporting his work as a member of the U.N. Human Rights Committee, reviewing State party reports. Additionally, as a teaching assistant for my school's international LL.M. writing course, I prepared the sample research memorandum for the Fall 2022 semester and taught more than 80 students how to use the Bluebook citation style.

Enclosed are copies of my resume, transcripts, writing sample, and letters of recommendation from Professor Laurence R. Helfer, Professor Samuel W. Buell, and General Charles J. Dunlap, Jr. Please contact me if you need any additional information. Thank you for your consideration.

Sincerely,
Tatiana Varanko

TATIANA VARANKO

4130 Garrett Road, Apartment 731, Durham, NC 27707
tatiana.varanko@duke.edu | (203) 721-0040

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor/Master of Laws (LLM) in International and Comparative Law expected, May 2024

GPA:	3.67
Summer Institute:	Duke-Leiden Institute in Global and Transnational Law, The Hague, Netherlands
Activities:	Duke Journal of Comparative and International Law, *Articles Editor*
	Duke Law Innocence Project, *Active Investigations Team Lead*
	Duke Afghan Asylum Project, *Student Volunteer*, Spring 2022
Academic-Year Work:	Bolch Judicial Institute/Judicature, *Student Fellow* (international rule of law)
	Professor Laurence R. Helfer, *Research Assistant* (international law & human rights)
	Professor Rima Idzelis, *Teaching Assistant* (LLM legal analysis, research & writing)

The George Washington University, Washington, DC
Bachelor of Arts in International Affairs (Concentration: Conflict Resolution), Minor in French Language, Literature & Culture, *cum laude*, May 2018

GPA:	3.55
Study Abroad:	IES Abroad, Rabat, Morocco, Spring 2017
Academic-Year Work:	National Archives and Records Administration, *Archival Aide*, 2016 –2018
	GWU Office of Alumni Relations, *Colonial Connections Caller*, 2015 –2016
	Office of Congresswoman Elizabeth Esty (D-CT), *Intern*, Fall 2015
	Peace Corps Office of Diversity and National Outreach, *Intern,* Spring 2015

EXPERIENCE

Shearman & Sterling, New York, NY
Summer Associate, May 2023 – July 2023

- Rotating through Litigation and Compensation, Governance, and ERISA practice groups.
- Working on a pro bono internal investigation related to the sexual abuse of a minor.
- Working on a pro bono project related to post-conflict justice in Ukraine.

Constitutional Court of Hungary, Budapest, Hungary
Legal Intern, Presidential Cabinet, May 2022 – June 2022

- Wrote summaries of fundamental rights cases from constitutional courts in Central Europe for a forthcoming inter-constitutional court database.
- Analyzed cases where the Hungarian Constitutional Court referenced European or international law to create a proposal for a subject-area-specific section of the inter-constitutional court database.

Federal Judicial Center, Washington, DC
Program Specialist, International Judicial Relations Office, January 2019 – August 2021

- Worked closely with IJRO Director (Mira Gur-Arie) and US judges on judicial education exchanges.
- Collaborated with US government agencies, international institutions, and partner judiciaries to implement international technical assistance projects.
- Oversaw fellowship program for foreign judges and lawyers researching areas of law or judicial practice relevant to reforms underway in their home countries and provided research support.
- Researched international rule of law and transnational litigation for web-based resources.
- Drafted all IJRO reports to the Judicial Conference and FJC Board.
- Managed ambassador and foreign representative visits for Justice Ruth Bader Ginsburg lying in repose at the Supreme Court of the United States.

Society of Industrial and Office Realtors, Washington, DC
Membership Coordinator, June 2018 – January 2019

- Provided guidance and resources to over 3,200 members across 36 countries.
- Drafted Member News and Chapter News content for the association's quarterly magazine.

ADDITIONAL INFORMATION

Worked two summers as a school custodian. Enjoys Orangetheory, collecting records, and learning Arabic.

TATIANA VARANKO
4130 Garrett Road, Apartment 731, Durham, NC 27707
tatiana.varanko@duke.edu | (203) 721-0040

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Contracts	Haagen, P.	4.0	4.50
Civil Procedure	Miller, D.	3.4	4.50
Torts	Coleman, D.	3.3	4.50
Legal Analysis, Research, Writing	Rich, R.	*Credit Only*	0.00

2022 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Legal and Policy Aspects of Civil-Military Relations	Dunlap, C.	*Credit Only*	0.50
Life or Death: The Decision-Making Process in a Death Penalty Case	McAuliffe, M.	*Credit Only*	0.50

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
International Law	Helfer, L.	4.0	3.00
Legal Analysis, Research, Writing	Rich, R.	4.0	4.00
International Research Methods	McArthur, M.	3.6	1.00
Criminal Law	Beale, S.	3.3	4.50
Constitutional Law	Blocher, J.	3.2	4.50

2022 DUKE-LEIDEN INSTITUTE IN GLOBAL AND TRANSNATIONAL LAW

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Authority and Legitimacy in International Adjudication	Helfer, L. and Stahn, C.	3.8	2.00
Realizing Rights: Strategic Human Rights Litigation and Advocacy	Duffy, H. and Huckerby, J.	3.8	2.00
Comparative Perspectives on Criminal Justice: Central Issues and Contextual Implementation	Coleman, J. and Ölcer, P.	3.5	2.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Corporate Crime	Buell, S.	4.00	4.00
Use of Force in International Law: Cyber, Drones, Hostage Rescues, Piracy, and More	Dunlap, C.	3.90	2.00
Comparative Law	Qiao, S.	3.80	3.00
Human Rights Advocacy	Huckerby, J.	3.70	2.00
Property Law	Foster, A.	3.60	4.00

2023 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Deposition Practice	Farel, L.	*Credit Only*	0.50
Leadership and Communication in the Law	Gentry, P. and Gilley, E.	*Credit Only*	0.50

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Business Associations	de Fontenay, E.	4.00	4.00
Investigating and Prosecuting National Security Cases	Stansbury, S.	3.90	2.00
Comparative Constitutional Design	Knight, J.	3.80	2.00
Ethics & the Law of Lawyering	Richardson, A.	3.70	2.00
Criminal Procedure: Adjudication	Dever, J.	3.60	3.00
Evidence	Stansbury, S.	3.30	3.00
Race and the Law	Jones, T.	*Credit Only*	1.00

TOTAL CREDITS: 70.50
CUMULATIVE GPA: 3.67

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I write to recommend Tatiana Varanko for the position of law clerk in your chambers. I do so with exceedingly strong enthusiasm.

Tatiana was my student in Corporate Crime, a demanding large course in the fall of 2022. I have come to know Tatiana from her participation in the course, meetings outside of class, including to discuss career and clerkship plans, and my review of her written work.

Tatiana's grade of 4.0 in my course was truly outstanding. Her exam paper consisted of twelve pages of writing produced in an eight-hour take-home that required covering four problems with multiple legal issues. Tatiana earned a score that tied three others, out of 43 students, for the best work in the class, in an anonymous grading process. The four-credit Corporate Crime course is rigorous and advanced, routinely attracting a cohort of the sharpest and most ambitious students in the Law School. (The course materials, which are published for free download, or bound at cost, can be seen at buelloncorporatecrime.com; the students are required to read and study almost every page of the two volumes.) Substantively, the course requires students to comprehend a broad range of topics that are challenging and unfamiliar for those who are, as Tatiana was, in only the third semester of law school: federal criminal law, constitutional criminal procedure, securities regulation, corporate law, evidence, and regulation of the legal profession.

Tatiana's paper was at the top of a group that included many of Duke Law's best performers in the second- and third-year classes. In my estimation, this showing, among an ambitious collection of some of the nation's best law students, is very strong evidence of Tatiana's promise for a career as an exceptional attorney at a national level of practice.

Tatiana is a fluent and skilled writer for her stage of education and is improving in that facility all the time. She has displayed these skills in multiple settings across her work at Duke, including as a student in the legal writing program and as a major participant in our Innocence Project and our Bolch Judicial Institute. Tatiana is seeking a clerkship in large part to continue to develop her abilities to stand out on paper and orally as a future litigation attorney who has a deep and demonstrated interest in courts. Tatiana's experiences as a full-time employee at the FJC prior to law school, her work in Hungary and the Netherlands, and her exceptional devotion to a variety of extracurricular projects at Duke are proof positive of her suitability for a demanding, full-time position in federal chambers.

Tatiana is a humble person, a "first generation" lawyer who demands a great deal of herself. One can see this in all she has done to this early stage in her life, from working as a school custodian while in college, to establishing herself as an important staffer at the FJC, to becoming integral to several programs at Duke. Even as one who came to law without prior conceptions about the field's content or culture, Tatiana is forging an independent path for herself that arises naturally from her genuine interests in and commitment to justice and international affairs. In the classroom, she is a careful listener more than one who seeks to control discussion. In the office, she is at ease in presenting herself. Tatiana will continue to grow rapidly as a lawyer and person. I see a high ceiling for her, especially with more of the mentoring she has been so astute and effective in seeking out since her undergraduate days. Whoever Tatiana clerks for, I expect the experience will lead to a career-long and deeply rewarding relationship for both her and the judge.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, and having taught and mentored thousands of law students, I am confident in predicting that Tatiana Varanko would be an excellent hire for any judge with a demanding docket and chambers that highly values professionalism and collaboration. I am happy to assist you further in any way with your evaluation of her application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

Sam Buell - buell@law.duke.edu - 919-613-7193

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I write this very enthusiastic letter of recommendation on behalf of Tatiana Varanko, a member of the Duke University Law School JD-LLM class of 2024, who has applied for a clerkship in your chambers.

I have come to know Tatiana quite well at Duke Law, both as a student in two of my courses and as one of my research assistants. Tatiana, who also serves as an Articles Editor of the Duke Journal of International and Comparative Law, is a very bright and articulate student who is deeply curious about the law and legal institutions and who writes clear and cogent prose. She is also conscientious, respectful, and a pleasure to work with.

I first met Tatiana in the Spring of 2022. As a student in Duke Law's distinctive JD-LLM program in international and comparative law, Tatiana enrolled in International Law as a required first-year course. International Law considers a broad range of issues relating to the rules that govern the relations between nation states and between governments and private parties. The key skills that the course emphasizes include understanding the relationship among the actors, norms, and institutions of the international legal system as well as detailed analyses of treaty texts, domestic statutes, the resolutions of intergovernmental organizations, and the decisions of international tribunals and domestic courts.

Tatiana made sustained, high-quality contributions to class discussions throughout the semester. She received a final grade of 4.0 in International Law, placing her in the top 10% of a class of 48 students. Tatiana's final exam answer was excellent. She correctly identified the key legal issues, effectively marshalled the facts and evidence required to analyze them and explained her reasoning in clear and cogent prose. Her answer is especially noteworthy given that she was competing against several upper-level JD and foreign LLM students, as well as her first year classmates.

Tatiana also enrolled in "Authority and Legitimacy in International Adjudication," which I co-taught in July 2022 as part of the Duke-Leiden Institute in Global and Transnational Law, which is held in The Hague in the Netherlands. This seminar analyzes and compares international courts in different areas, including economic integration, trade, human rights, and criminal law. Students review the doctrines developed by these international judicial bodies, consider the legal and political challenges that they have confronted, and the assess the extent to which they have succeeded in overcoming these challenges. Tatiana received a final grade of 3.8, tied for the third highest grade in a class of 16 students from Duke Law School and from universities in Europe and Asia.

Tatiana's excellent academic performance extends well beyond international law. She has received top grades in courses as varied as Business Associations, Corporate Crime, and Investigating and Prosecuting National Security Cases. Although Duke Law does not rank students, her cumulative GPA of 3.67 suggests that she is within the top 10% of her class.

Based on Tatiana's strong academic performance, I invited her to work for me as a research assistant. She has help me with various projects relating to the dispute settlement mechanisms created by social media companies such as Facebook and Google for challenging the removal of online content. In 2022, for example, the European Union adopted a new regulation, the Digital Services Act, that requires internet platforms to provide such mechanisms to their users. Most recently, she has assisted me in preparing for the UN Human Rights Committee's review of several reports by States parties to the International Covenant on Civil and Political Rights, a multilateral treaty to which the United States is also a party.

For each of these research assignments, Tatiana identified a comprehensive list of relevant (and often difficult to find) sources and prepared clear and concise analytical memos setting forth her findings. I have been very satisfied with her research and writing abilities and her attention to detail. I have also been impressed by her work ethic and professional and enthusiastic attitude.

Tatiana has also had an interesting professional experience relevant to a clerkship. In May and June 2022, she served as a legal intern with the Constitutional Court of Hungary. Tatiana summarized individual rights decisions from other constitutional courts in Central and Eastern Europe and analyzed cases where the Hungarian Constitutional Court referenced foreign and international law.

Larry Helfer - Helfer@law.duke.edu - 919-613-8573

In sum, based on my many interactions with Tatiana both inside and outside of the classroom, I am confident of her ability to handle the diverse responsibilities of a judicial law clerk. If there is any additional information that I can provide to convince you to hire her, please feel free to contact me at helfer@law.duke.edu or 919-613-8573.

Sincerely yours,

Laurence R. Helfer
Harry R. Chadwick, Sr. Professor of Law

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I am writing to strongly endorse the application of Ms. Tatiana Varanko to be your law clerk. Tatiana is a student here at Duke University School of Law, and I got to know her especially well when she took my *Use of Force in International Law* class last fall.

By way of information, I am a Professor of the Practice and Director of the Center on Law, Ethics and National Security at Duke Law School. Prior to retiring from the military in June of 2010, I served as the Air Force's deputy judge advocate general with responsibility for assisting in the supervision of more than 2,550 full and part-time attorneys.

Tatiana is a wonderful student: prepared, courteous to others, and a hard worker. She is also very articulate and able to 'think on her feet.'

Tatiana wrote a superb paper for my *Use of Force* class, "Assessing the Viability of the Use of Force to Respond to Climate Rogue States and Criminal Justice Alternatives." Her writing shows her to be a skilled researcher who can analyze complex issues, and then craft a clearly expressed legal analysis. She is definitely a standout among her peers, as is evidenced by her selection as the Articles Editor of Duke's prestigious *Journal of Comparative & International Law*.

Beyond her considerable professional talents, Tatiana is a very likeable and thoughtful young lawyer-to-be. I'll bet she'll be a very popular colleague in your chambers. Importantly, everything I know about Tatiana shows her to be a person of unquestioned integrity with very strong ethical values.

I am certain that you would be extremely pleased to have Tatiana as your law clerk. I'm more than happy to discuss this with you at your convenience.

Sincerely yours,

Charles J. Dunlap, Jr.
Major General, USAF (Ret.)
Professor of the Practice of Law
Executive Director, Center on Law,
Ethics and National Security

Charles Dunlap - dunlap@law.duke.edu - 919-613-7233

TATIANA VARANKO
4130 Garrett Road, Apartment 731, Durham, NC 27707
tatiana.varanko@duke.edu | (203) 721-0040

WRITING SAMPLE

I wrote this appellate brief for my Legal Analysis, Research, and Writing course at Duke University School of Law in the spring of 2022. The assignment was to address the meaning of the phrase "foreign or international tribunal" in 28 U.S.C. § 1782. Writing for the Respondents-Appellees, I argued that the phrase does not cover private arbitration.

The cover page, table of contents, and table of authorities have been omitted for length.

STATEMENT OF THE ISSUE

28 U.S.C. § 1782 authorizes U.S. district courts to compel individuals in their jurisdiction to provide discovery for proceedings before a "foreign or international tribunal" upon request from that tribunal or interested persons. Does the phrase "foreign or international tribunal" in 28 U.S.C. § 1782(a) include private arbitration such that foreign parties can request discovery from U.S. citizens for use in private arbitral proceedings abroad?

STATEMENT OF THE CASE

Petitioner-Appellant Op Zee Verven ("O.Z.V.") is a Dutch company that manufactures and sells paint intended for exterior use on boats. ER-1. O.Z.V. has a contract with Yacht-Sea!, an English company, for the sale of this paint. ER-2. Yacht-Sea! uses it on vessels it manufactures and sells worldwide. ER-2. The contract contains a provision naming the London Court of International Arbitration, a private arbitral body, as the forum for resolving disputes arising from the contract. ER-2.

A Yacht-Sea! customer sued the company in late 2020 for losses sustained in repairing his yacht. ER-2. It had taken on water over several months while moored at the marina in California where the Respondents-Appellees Omar Ayad, Jennifer Jones, and Yi-Chin Cho work. ER-2. In mid-2021, a jury found for the customer and ordered Yacht-Sea! to pay damages. ER-2. Yacht-Sea! sought indemnification, claiming the damages were caused by paint failure. ER-2. In September 2021, Yacht-Sea! initiated private arbitral proceedings with O.Z.V. under their contract. ER-2.

On October 5, O.Z.V. filed an Application for an Order to Take Discovery in the U.S. District Court for the Central District of California. ER-1. It requested an order authorizing it to obtain testimony from the Respondents through depositions. ER-1. O.Z.V. claimed that its

request was under 28 U.S.C. § 1782 and that the London Court of Arbitration, a private arbitral body, is a "foreign or international tribunal." ER-3. The employees filed a Response on October 25, asserting that a private arbitral body does not qualify as a "foreign or international tribunal" under § 1782 and requesting that the district court reject O.Z.V.'s Application. ER-5, ER-6.

On December 6, the district court issued an Order denying O.Z.V.'s Application. ER-7. The court held that the London Court of Arbitration is not a "foreign or international tribunal" under § 1782 because it is a private commercial arbitral body. ER-8. Thus, the district court lacked the authority to grant O.Z.V.'s request. ER-8. O.Z.V. filed its Notice of Appeal on January 3, 2022. ER-9. This appeal is the subject of the proceedings before this Court. ER-9.

ARGUMENT

THE TERM "TRIBUNAL" IN 28 U.S.C. § 1782 DOES NOT ENCOMPASS PRIVATE ARBITRAL BODIES.

28 U.S.C. § 1782 allows district courts to compel individuals in its jurisdiction to provide testimony or other discovery for proceedings before a "foreign or international tribunal." 28 U.S.C. § 1782(a). Courts may provide this international judicial assistance upon receipt of a request or letter rogatory from that tribunal or a request from an interested person in the proceedings. *Id.*

The meaning of "foreign or international tribunal" in § 1782 is central to this case. The Petitioner incorrectly claims that the phrase includes private arbitration. ER-3. However, the plain language, legislative history, and policy implications show that the language only encompasses government-sanctioned bodies. This Court should hold that private arbitral bodies are not covered by § 1782 and affirm the district court's order denying O.Z.V.'s request for discovery in proceedings before the London Court of Arbitration.

Whether a private arbitral body is a "foreign or international tribunal" under § 1782 is a matter of statutory interpretation, which constitutes a question of law. *See In re Hill*, 811 F.2d 484, 485 (9th Cir. 1987). Questions of law are reviewed de novo on appeal. *Id.*

Other circuits have previously addressed this issue. The Fourth and Sixth Circuits have incorrectly held that § 1782 does extend to private arbitration. *Servotronics, Inc. v. Boeing Co.*, 954 F.3d 209, 216 (4th Cir. 2020); *In re Application to Obtain Discovery for Use in Foreign Proc.*, 939 F.3d 710, 714 (6th Cir. 2019). However, the Second, Fifth, and Seventh Circuits have correctly held that it does not. *Servotronics, Inc. v. Rolls-Royce PLC*, 975 F.3d 689, 696 (7th Cir. 2020); *In Re Guo*, 965 F.3d 96, 100 (2d Cir. 2020) (reaffirming *National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184, 185 (2d Cir. 1999)); *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 883 (5th Cir. 1999).[1]

This Court should align with the latter circuits and hold that § 1782 does not apply to private arbitration. The plain language and the legislative history illustrate that the statute only applies to government-sanctioned proceedings. This interpretation is further supported by the conflict a contrary interpretation would cause with the Federal Arbitration Act and the detrimental effects it would have on the core purposes of arbitration. For these reasons, the Court should hold that § 1782 excludes private arbitration and affirm the district court's denial of O.Z.V.'s request for discovery for proceedings before the London Court of Arbitration.

[1] The only Supreme Court decision involving § 1782 does not answer whether it applies to private arbitration. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246–47 (2004) (holding that an interested person can make a request under § 1782 for proceedings before the European Commission and that those proceedings need only be "in reasonable contemplation").

A. The plain language of 28 U.S.C. § 1782 does not include arbitration.

When resolving disputes over statutory interpretation, the Court must begin by examining the ordinary meaning of the text and the statute's structure. *United States v. King*, 24 F.4th 1226, 1231 (9th Cir. 2022). If this yields an unambiguous meaning, the Court must stop its analysis and disregard any additional arguments. *Id.* Section 1782(a) permits a "foreign or international tribunal" or interested person to request discovery for proceedings but does not specifically define "foreign or international tribunal." However, a review of the ordinary meaning of the language contemporaneous to its incorporation into the statute demonstrates that private arbitral bodies are not covered by § 1782. This is further supported by the statutory scheme, which indicates that assistance under § 1782 is only available in proceedings before a government entity.

1. The ordinary meaning of the phrase "foreign or international tribunal" does not include arbitral bodies.

When a statute does not define a term, the Court should determine its ordinary meaning by examining a dictionary definition contemporaneous to when the statute was enacted. *United States v. Carona*, 660 F.3d 360, 367 (9th Cir. 2011). When "foreign or international tribunal" was added to § 1782 in 1964,[2] *Black's Law Dictionary* defined "tribunal" as "[t]he seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise." *Tribunal*, *Black's Law Dictionary* (4th ed. 1951). Notably, the definitions all include either "judge" or "court," which are inherently government-linked terms. Other dictionaries are even more explicit, stating that a tribunal "implies . . . power of decision of adjudicative effectiveness. Adjudication is a

[2] Act of October 3, 1964, Pub. L. No. 88-619, § 9, 78 Stat. 995, 997 (1964).

government function, the exercise of the sovereign power of the state." *Tribunal*, *Pope Legal Definitions* (1st ed. 1919). This reinforces that a tribunal was considered a government entity in 1964. Thus, the Court should interpret the language of § 1782 as excluding private entities.

However, the statute's wording is even more particular: it modifies "tribunal," specifying that it be "foreign" or "international." The doctrine of noscitur a sociis instructs that "a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams,* 553 U.S. 285, 294 (2008). Dictionaries when § 1782 was amended defined "foreign" as "[b]elonging to another nation or country; belonging or attached to another jurisdiction." *Foreign*, *Black's Law Dictionary* (4th ed. 1951). The use of "belonging" and "attached" demonstrates the link between the state and the tribunal. Taken together, "foreign tribunal" refers to a court belonging to another country, not to a private entity. This is further supported by precedent, which shows that before the language change, the Supreme Court understood "foreign tribunal" to mean a foreign court. *See Canada Malting Co. v. Patterson S.S.*, 285 U.S. 413, 423 (1932) (stating that U.S. courts can decline jurisdiction if a foreign tribunal is a more suitable venue and that a Canadian court was more suitable in the instant case).

The second modification to "tribunal" is "international." The word's ordinary meaning is "participated in by two [or] more nations." *International*, *Webster's New International Dictionary of the English Language* (3d ed. 1961). This indicates that a tribunal that is "international" derives authority from an agreement between nations. This meaning of "international tribunal" is supported by contemporaneous discussions about international tribunals in Supreme Court concurrences. *See Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 178 n.4 (1951) (Douglas, J., concurring) (referring to the International Military Tribunal at Nuremberg as an international tribunal); *Hirota v. Gen. of the Army Douglas*

MacArthur, 338 U.S. 197, 204–05 (1949) (Douglas, J., concurring) (referring to the International Military Tribunal for the Far East as an international tribunal).

The Court has a "duty to respect not only what Congress wrote but, as importantly, what it didn't write." *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019). Noticeably absent from § 1782 are the modifiers "private" or "arbitral" before the word "tribunal." *See generally* § 1782. Nowhere in the plain text of the statute is there anything that can be construed to include arbitral bodies that are not government sanctioned. *Id.* The ordinary meaning of the text is unambiguous: a private arbitral body is not a "foreign or international tribunal" under § 1782.

2. The statutory context of 28 U.S.C. § 1782 reveals that a "foreign or international tribunal" is a government-sanctioned judicatory body and does not include private arbitration.

The greater statutory scheme further demonstrates that a "foreign or international tribunal" is a judicative body deriving its authority from one or more states. When an act contains the same phrase in multiple parts, the Court should construe it consistently throughout. *City of Los Angeles v. Barr*, 941 F.3d 931, 941 (9th Cir. 2019). The Act amending the language of § 1782 also adds 28 U.S.C. § 1696 and 28 U.S.C. § 1781 to the U.S. Code. §§ 4, 8–9, 78 Stat. at 995–97. Section 1696 uses the phrase "foreign or international tribunal" when discussing service of process in foreign and international proceedings. Section 1781 uses it repeatedly when outlining the rules for the transmission of letters of rogatory or requests between a tribunal in the U.S. and one abroad. Both use "foreign or international tribunal" when discussing actions that are inherently interactions between governments. *Rolls-Royce PLC*, 975 F.3d at 695. In this statutory context, the identical language in § 1782 should be understood to apply solely to government-sanctioned bodies and not extend to private arbitration. Since the meaning of the

phrase is unambiguous after a complete textual reading, the Court should end its analysis there and not pay further mind to extrinsic arguments. *See King*, 24 F.4th at 1231.

B. The legislative history illustrates that § 1782 was not intended to apply to private arbitral bodies.

The Court should only expand its analysis to include legislative history if the text of the statute is ambiguous, and the language of § 1782 clearly refers to government entities. *J.B. v. United States*, 916 F.3d 1161, 1167 (9th Cir. 2019). However, if the Court does expand its analysis beyond the text, it will discover that the legislative history further demonstrates that § 1782 excludes private arbitral bodies.

The purpose of the Act amending the language of § 1782 was "[t]o improve judicial procedures for serving documents, obtaining evidence, and providing documents in litigation with international aspects." § 1, 78 Stat. at 995. Notably, the purpose is to improve procedures *in litigation*, which is inherently court-linked. This indicates that Congress intended to provide international judicial assistance to government-sanctioned proceedings in a foreign or international forum, not private proceedings.

Before Congress amended the language of § 1782, the statute did not provide assistance to international tribunals. Hans Smit, *Assistance Rendered by the United States in Proceedings before International Tribunals*, 62 Colum. L. Rev. 1264, 1272 (1962). However, requests for assistance in treaty-based arbitral proceedings between the U.S. and Canada and from the United States-German Mixed Claims Commission in the 1930s revealed the need to expand U.S. judicial assistance beyond foreign courts. *Id.* at 1272–73. *See also* S. Rep. 88-1580, at 3784 (1964) (citing Smit with approval). Congress enacted 22 U.S.C. §§ 270–270g to allow U.S. courts to provide assistance to international tribunals. *See* 22 U.S.C. §§ 270–270g (1962), *repealed by* § 3, 78 Stat. at 995. However, U.S. assistance was still limited to international

tribunals to which the U.S. belonged and proceedings involving the U.S. or one of its citizens. *Id*. Congress found that "[t]his limitation [was] undesirable" and sought to expand assistance to all proceedings before such entities. S. Rep. 88-1580, at 3784–85.

In 1958, Congress established the Commission and Advisory Committee on International Rules of Judicial Procedure ("the Commission") to provide recommendations for improving U.S. assistance to "foreign courts and quasi-judicial agencies." Act of September 2, 1958, Pub. L. No. 85-906, §§ 1–2, 72 Stat. 1743, 1743 (1958). Congress adopted the Commission's proposals in full; this included replacing "in any judicial proceeding pending in any court in a foreign country" in § 1782 with "in a proceeding in a foreign or international tribunal." 28 U.S.C. § 1782(a) (1958), *amended by* § 9, 78 Stat. at 997; § 1782(a). This change was aimed at expanding the language of § 1782 to encompass the international tribunals previously covered by 22 U.S.C. §§ 270–270g and removing the limitations it had imposed. S. Rep. 88-1580, at 3785.

Congress intended for the new language to be more liberal than the previous phraseology, but not for it to be limitless. S. Rep. 88-1580, at 3785. Hans Smit, who helped draft the Commission's recommendations,[3] identified in 1962 that "an international tribunal owes both its existence and its powers to an international agreement [between states]." Smit, *supra*, at 1267. Further, the Committee included in its recommendation examples of applicable proceedings. S. Rep. 88-1580, at 3788. These included "proceedings . . . pending before investigating magistrates in foreign countries . . . administrative and quasi-judicial proceedings . . . [and proceedings] before a foreign administrative tribunal or quasi-judicial agency as in proceedings before a conventional foreign court." S. Rep. 88-1580, at 3788. Notably, these are all

[3] *In re Letter of Request from Crown Prosecution Serv. of United Kingdom*, 870 F.2d 686, 689 (D.C. Cir. 1989).

government-linked bodies. Private arbitration was not mentioned once. *See generally* S. Rep. 88-1580.

Nowhere in the Commission's Report or the Congressional Record is there a mention of private arbitral bodies. *See generally* 1105 Cong. Rec. 596–98, 22,857 (1964); S. Rep. 88-1580 at 3782–3794. This shows that Congress did not consider extending § 1782 to encompass such entities. If Congress had wanted to make such a large alteration to the purpose and applicability of § 1782 it would have discussed it. Since it did not, the evidence intimates that Congress did not intend for the amended § 1782 to cover private arbitration. *National Broadcasting Co., Inc.*, 165 F.3d at 189. Thus, the Court should hold that a "foreign or international tribunal" is a government-sanctioned body.

C. Enlarging the definition of "tribunal" under § 1782 to include private arbitral bodies would have undesirable policy implications.

The Court should apply the pure text meaning of a statute when the language is clear, as it is in this case. *J.B.*, 916 F.3d at 1167. However, if it must expand its analysis, it may consider public policy alongside legislative history. *Garcia v. PacifiCare of California, Inc.*, 750 F.3d 1113, 1116 (9th Cir. 2014). Doing so for § 1782 only provides further evidence that "foreign or international tribunal" should be interpreted to exclude private arbitration.

When interpreting the language of a statute, the Court should aim to avoid conflict with other federal statutes. *California ex. rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1012 (9th Cir. 2000). This means that the Court should read § 1782 to exclude private arbitration. Doing otherwise would result in U.S. courts having a different policy for providing assistance to private arbitration abroad than they do for domestic private arbitration.

The Federal Arbitration Act is the mechanism for obtaining discovery for domestic private arbitration. *See* 9 U.S.C. § 7. The judiciary's role is more limited under 9 U.S.C. § 7 than under 28 U.S.C. § 1782. *See generally id.*; 28 U.S.C. § 1782. Section 7 permits *arbitrators* to issue a summons for documents or testimony for use in proceedings. 9 U.S.C. § 7. However, they can only petition a district court to compel such discovery if most of the arbitral panel sits within the court's jurisdiction. *Id.* Additionally, by explicitly giving such permissions to arbitrators, § 7 indicates that interested parties cannot make such requests. *National Broadcasting Co., Inc.*, 165 F.3d at 187. By contrast, 28 U.S.C. § 1782 allows both a tribunal and interested persons to request discovery without imposing limitations beyond the Federal Rule of Civil Procedure. Consequently, if the Court interprets § 1782 to include private arbitral bodies, parties to foreign arbitration will be able to request what parties to domestic arbitration cannot. *See* 9 U.S.C. § 7; 28 U.S.C. § 1782. It is illogical to think that Congress intended for foreign arbitral bodies to have more access to U.S. judicial assistance than domestic ones. To maintain consistent discovery policies for private arbitration at home and abroad, the Court must interpret "foreign or international tribunal" under § 1782 as excluding private arbitral bodies.

Extending § 1782 to include private arbitration would also undermine the incentives for choosing to arbitrate rather than litigate. Parties include arbitration provisions in their contracts to make the dispute resolution process more efficient and cost-effective than litigation. Writing arbitration into a contract allows parties to decide in advance on the forum and procedures they will use. *Biedermann Int'l*, 168 F.3d at 883. However, if "parties succumb to fighting over burdensome discovery requests far from the place of arbitration . . . [it will] thwart[] private international arbitration's greatest benefits." *Id.* Extending § 1782 would cause discovery requests for private arbitration to become unduly burdensome on parties and the courts that

consider them. To avoid such problems, the Court must read "foreign or international tribunal" in § 1782 to apply only to state-sanctioned bodies.

CONCLUSION

The Court should hold that "foreign or international tribunal" under 28 U.S.C. § 1782 does not cover private arbitration. In the present case, this means that the London Court of Arbitration is not covered by § 1782. Thus, the Respondents respectfully request that the Court affirm the Order denying O.Z.V.'s request for discovery.

Date: March 21, 2022

Respectfully submitted,

By /s/ Tatiana Varanko

Attorney for Respondents-Appellees
Omar Ayad, Jennifer Jones, and
Yi-Chin Cho

Applicant Details

First Name	**Sruthi**
Last Name	**Venkatachalam**
Citizenship Status	**U. S. Citizen**
Email Address	**sruthi.venkatachalam@yale.edu**
Address	**Address** **Street** **4580 Royal Birkdale Dr** **City** **Westerville** **State/Territory** **Ohio** **Zip** **43082**
Contact Phone Number	**7409728284**

Applicant Education

BA/BS From	**Case Western Reserve University**
Date of BA/BS	**May 2020**
JD/LLB From	**Yale Law School** **https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf**
Date of JD/LLB	**May 31, 2023**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Yale Law and Policy Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Morris Tyler Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Hathaway, Oona
oona.hathaway@yale.edu
203-436-8969

Kronman, Anthony
anthony.kronman@yale.edu
203-432-4934

Siegel, Reva
reva.siegel@yale.edu
203-432-6791

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sruthi Venkatachalam
93 Mansfield St. Apt. 2
New Haven, CT 06511
740-972-8284
sruthi.venkatachalam@yale.edu

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby St.
Norfolk, VA 23510

Dear Judge Walker:

I am a third-year student at Yale Law School, and I wish to apply for a clerkship in your chambers for the 2024-2025 term or any term thereafter. During the 2023-2024 year, I will be working in the Washington, D.C. office of Skadden, Arps, Slate, Meagher & Flom LLP in the National Security Practice Group.

I am keen to clerk in your court so that I can contribute my understanding of national security, FOIA, and administrative law to your work. Since the U.S. District Court for Eastern District of Virginia adjudicates a large number of cases related to these subjects, my experience would allow me to come up to speed quickly on these matters. I am excited by both the challenge and opportunity provided by working in such a fast-paced and dynamic environment. I have a particular interest in clerking for you given your prior work in public service. As a lawyer with aspirations to enter government service, I would welcome the opportunity to work with a judge whose experience aligns with my professional interests.

I have enclosed a resume, law school transcript, undergraduate transcript, writing sample, and list of recommenders. Yale Law School Professors Oona Hathaway, Anthony Kronman, and Reva Siegel will submit letters of recommendation on my behalf. I am happy to provide any additional information you might require.

Thank you for your consideration. I would welcome the opportunity to interview with you, and I look forward to hearing from you at your convenience.

Sincerely,

Sruthi Venkatachalam
Enclosures

SRUTHI VENKATACHALAM
sruthi.venkatachalam@yale.edu | 740-972-8284 | she/her/hers
127 Wall St., New Haven, CT, 06511

EDUCATION

YALE LAW SCHOOL, New Haven, CT
J.D., expected May 2023
Activities: Yale Law and Policy Review, *Executive Development Editor*
Just Security, *Student Staff Editor*
National Security Group (NSG), *VP of Scholarship*

CASE WESTERN RESERVE UNIVERSITY (CWRU), Cleveland, OH
M.A., Military Ethics, May 2020
Honors: CALI Award in International Law (Highest grade in International Law Fall 2019 at CWRU Law School)
Thesis: Torture as Mala in Se and Rapport Based Interrogations as a Superior Model

B.A., Statistics and B.A., International Studies, May 2020, *summa cum laude*
Honors: Phi Beta Kappa, Webster Godman Simon Award for Excellence in Mathematics (awarded to one BA candidate annually), Dean's High Honor List

EXPERIENCE

COKER FELLOW IN CONSTITUTIONAL LAW Fall 2022
Fellow for Professor Kronman. Instructed a group of first year students on the fundamentals of legal writing and critiqued their briefs by providing substantial feedback on interpretations of case law and effective legal advocacy. Mentored first year students by advising them on navigating law school and developed group camaraderie.

SKADDEN, ARPS, SLATE, MEAGHER, & FLOM Summer 2022
Washington DC Office Summer Associate. Drafted memoranda in support of the national security and litigation practice groups on issues relating to the Eighth and Fourteenth Amendments, consumer financial protection, and AI technology. Analyzed case law and conducted statutory analysis related to FCRA and federal preemption of New York state laws.

MEDIA FREEDOM AND INFORMATION ACCESS CLINIC Fall 2021 – Fall 2022
Student Clinician. Advocated for algorithmic accountability in the Connecticut state legislature and testified to the Connecticut Advisory Board for the U.S. Commission on Civil Rights on the intersection between algorithms and civil liberties. Litigated First Amendment issues in state and federal court for FOIA and defamation suits.

JUDGE VICTOR A. BOLDEN, U.S. DISTRICT COURT, DISTRICT OF CONNECTICUT Spring 2022
Legal Extern. Assisted chambers in the preparation of judicial orders and opinions by conducting legal research, writing legal memoranda, and drafting sections of orders for a range of civil and criminal cases on the judge's docket.

PROFESSOR REVA SIEGEL, YALE LAW SCHOOL Winter 2021 – Spring 2022
Research Assistant. Conducted extensive research and wrote memoranda on constitutional law issues relating to reason-based bans for abortions, suspect classification based on wealth in the Warren Court, and the emergence of originalism.

U.S. DEPARTMENT OF JUSTICE, PUBLIC INTEGRITY SECTION Summer 2021
Summer Intern. Researched and drafted memoranda on novel legal issues such as those arising from emerging technologies, civil procedure, evidentiary question, statutes of limitations, and the effects of recent U.S. Supreme Court developments, drafted prosecution memoranda, and drafted motions for ongoing litigation.

FEDERAL BUREAU OF INVESTIGATION May 2018 – March 2020
D.C. Headquarters Honors Intern; Cleveland Field Office Honors Intern. Provided tactical support, program management, and analytical insights for cases in FBI's Counterterrorism Division and High Value Detainee Interrogation Group.

SKILLS AND INTERESTS

Muay Thai, Brazilian Jiu Jitsu, Classical Violin, Baking, Statistical Analysis, R and R Studio, STATA, MATLAB

YALE LAW SCHOOL

Office of the Registrar

TRANSCRIPT RECORD

YALE UNIVERSITY

Date Issued: 02

Record of: Sruthi Priyal Venkatachalam Page: 1
Issued To: Sruthi Venkatachalam
Parchment Document ID: TWB2OSBK

Date Entered: Fall 2020

Degree Awarded : Juris Doctor 31-MAY-2023

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
Fall 2020					
LAW	10001	Constitutional Law I Section B	4.00	CR	R. Siegel
LAW	11001	Contracts I Section A	4.00	CR	S. Carter
LAW	12001	Procedure I Section A	4.00	CR	H. Koh
LAW	14001	Criminal Law & Admin I Grp 3	4.00	CR	J. Whitman
		Term Units 16.00 Cum Units 16.00			
Spring 2021					
LAW	21024	Cyberlaw, Policy, and Politics	1.00	CR	O. Hathaway
LAW	21277	Evidence	4.00	H	S. Carter
LAW	21722	StatutoryInterpretRegState	3.00	P	W. Eskridge
LAW	30246	Policing, Law,andPolicy Clinic	3.00	H	T. Meares, T. Tyler, J. Camacho
LAW	40001	Supervised Research	1.00	H	P. Gewirtz
LAW	50100	RdgGrp:Law and Ethics Big Data	1.00	CR	J. Balkin
		Term Units 13.00 Cum Units 29.00			
Sup. Research: Just Security Writing Fellowship.					
Fall 2021					
LAW	20011	Sentencing	3.00	P	J. Gleeson
LAW	20170	Administrative Law	4.00	H	C. Jolls
LAW	20219	Business Organizations	4.00	H	J. Macey
LAW	30175	MediaFreedm&InfoAccessClinic	4.00	H	D. Schulz, M. Linhorst, D. Dinielli, S. Baron, N. Guggenberger, J. Borg, J. Balkin, S. Stich
		Term Units 15.00 Cum Units 44.00			
Spring 2022					
LAW	21068	Antitrust	4.00	H	G. Priest
Supervised Analytic Writing					
LAW	21763	International Law	4.00	H	O. Hathaway
LAW	21784	Intelligence Law	2.00	H	O. Hathaway, R. Litt
LAW	30175	MediaFreedm&InfoAccessClinic	4.00	H	D. Schulz, M. Linhorst, S. Shapiro, D. Dinielli, S. Baron, N. Guggenberger, J. Borg, J. Balkin, S. Stich
LAW	40001	Supervised Research	2.00	CR	C. Jolls
Substantial Paper					
		Term Units 16.00 Cum Units 60.00			
Fall 2022					
LAW	20366	Federal Courts	3.00	H	A. Steinman
LAW	20557	Torts and Regulation	3.00	H	D. Kysar
LAW	30212	International Arbitration	2.00	H	M. Friedman
LAW	30218	Advanced Written Advocacy	3.00	H	N. Messing
LAW	50100	RdgGrp:Repro Justice Lawyering	1.00	CR	A. Miller
		Term Units 12.00 Cum Units 72.00			

********** CONTINUED ON PAGE 2 **********

YALE LAW SCHOOL
Office of the Registrar

TRANSCRIPT RECORD

YALE UNIVERSITY
Date Issued: 02-JUN-2023

Record of: Sruthi Priyal Venkatachalam Page: 2
Level: Professional: Law (JD)

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
Institution Information continued:					
Spring 2023					
LAW	21017	Property	4.00	H	T. Zhang
LAW	21217	Crim Procedure: Adjudication	3.00	P	P. Shechtman
LAW	21258	ComparativeCrimLawFairTrials	2.00	H	R. Coffey
LAW	30193	ProsecutnExtrnshp&Instruction	3.00	H	K. Stith, M. Donovan, J. Francis, H. Cherry S. Garbarsky

Term Units 12.00 Cum Units 84.00

********************** END OF TRANSCRIPT **********************

LEG. SCHOL. YALENS. NOV. PORT. ANN. DOM. MDCCCXXIV. CONDIT. LUX ET VERITAS

HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

HONORS	Performance in the course demonstrates superior mastery of the subject.
PASS	Successful performance in the course.
LOW **P**ASS	Performance in the course is below the level that on average is required for the award of a degree.
CREDIT	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
FAILURE	No credit is given for the course.
CRG	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
RC	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
T	Ungraded transfer credit for work done at another law school.
TG	Transfer credit for work completed at another law school; counts toward graded unit requirement.
EXT	In-progress work for which an extension has been approved.
INC	Late work for which no extension has been approved.
NCR	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

For Classes Matriculating 1843 through September 1950

80 through 100 = Excellent
73 through 79 = Good
65 through 72 = Satisfactory
55 through 64 = Lowest passing grade
0 through 54 = Failure

To graduate, a student must have attained a weighted grade of at least 65.

For Classes Matriculating September 1951 through September 1955

E = Excellent
G = Good
S = Satisfactory
F = Failure

To graduate, a student must have attained a weighted grade of at least Satisfactory.

For Classes Matriculating September 1956 through September 1958

A = Excellent
B = Superior
C = Satisfactory
D = Lowest passing grade
F = Failure

To graduate, a student must have attained a weighted grade of at least D.

From September 1959 through June 1968

A = Excellent
B+
B = Degrees of Superior
C+
C = Degrees of Satisfactory
C-
D = Lowest passing grade
F = Failure

To graduate a student must have attained a weighted grade of at least D.

From September 1968 through June 2015

H = Work done in this course is significantly superior to the average level of performance in the School.
P = Successful performance of the work in the course.
LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.

CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis.
F = No credit is given for the course.

RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
EXT = In-progress work for which an extension has been approved.
INC = Late work for which no extension has been approved.
NCR = No credit given for late withdrawal from course or for reasons noted in term comments.

CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
T = Ungraded transfer credit for work done at another law school.
TG = Transfer credit for work completed at another law school; counts toward graded unit requirement.
*Provisional grade.

[redacted] [redacted]
Student Name: Sruthi Priyal Venkatachalam

Case Western Reserve University
Unofficial Transcript

Degrees/Credentials Earned

Degree/Credential: Bachelor of Arts
Date Awarded: 05/17/2020
Degree Honors: summa cum laude
Plan: International Studies with Honors
Plan: Statistics

Academic Program History

Program: Arts & Sciences Undergraduate
Completed Program
International Studies (BA) Major
Statistics (BA) Major

Test Credits

Applied Toward Undeclared Undergraduate

Fall 2016

Course	Description	Attempted	Earned	Grade	Points
BIOL 114	Principles of Biology		3 00	AP	
CHEM 111	Princ Chem for Engineers		4 00	AP	
EECS 132	Intro to Programming in Java		3 00	AP	
ECON 103	Prin of Macroeconomics		3 00	AP	
ECON 102	Prin of Microeconomics		3 00	AP	
POSC 109	The U.S. Political System		3 00	AP	
MATH 121	Calc for Science & Engr I		4 00	AP	
MATH 122	Calc for Science & Engr II		4 00	AP	
MUTH 103	Theory I		3 00	AP	
PSCL 101	General Psychology I		3 00	AP	
STAT 201	Bas Stat Soc Sci & Life Sci		3 00	AP	

Course Trans GPA: 0 000 Transfer Totals: 0.00 36 00 0.000

Transfer Credits

Transfer Credit from Case Western Reserve University
Applied Toward Arts & Sciences Undergraduate

Fall 2019

Course	Description	Attempted	Earned	Grade	Points
INTL 399	INTL Colloquium		3.00	A	
PHIL 417	War and Morality		3.00	A	
LAWS 5118	International Law Research Lab		3.00	A	
LAWS 5121	Intl Criminal Law & Procedure		3.00	A	
LAWS 4101	International Law		3.00	A	

Course Trans GPA: 4 000 Transfer totals: 15.00 15.00 60.000

Transfer Credit from Case Western Reserve University
Applied Toward Arts & Sciences Undergraduate

Spring 2020

Course	Description	Attempted	Earned	Grade	Points
PHIL 436	Military Ethics and Int'l Law		3.00	A	
PHIL 501	Military Ethics MA Capstone		6.00	A	
PHIL 405	Ethics		3.00	A	

Course	Description	Attempted	Earned	Grade	Points
LAWS 5116	International Human Rights		3 00	A	
PH L 484	Ethics and Public Policy		3 00	A	

Course Trans GPA: 4.000 Transfer totals: 18 00 18 00 72 000

Beginning of Undergraduate Record

Fall 2016

Course	Description	Attempted	Earned	Grade	Points
MATH 223	Calc for Science & Engr III	3 00	3 00	A	12.000
MUEN 386	Case Camerata Chamber Orch	1 00	1 00	A	4.000
MUEN 365	Case Chamber Music	1 00	1 00	A	4.000
CHIN 101	Elementary Chinese I	4 00	4 00	A	16.000
POSC 172	Intro to Internatl Relations	3 00	3 00	A	12.000
ENGR 131	Elementary Computer Prog	3 00	3 00	A	12.000
FSSO 158	Orchestra in Modern Culture	4 00	4 00	A	16.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4.000	Term Totals	19 00	19 00	19 00	76.000
Cum GPA:	4.000	Cum Totals	19 00	19 00		76.000

Spr 2017

Course	Description	Attempted	Earned	Grade	Points
HSTY 113	Intro to Modern World Hist	3 00	3 00	A	12.000
MATH 224	Elem Differential Equations	3 00	3 00	A	12.000
STAT 313	Statistics for Experimenters	3 00	3 00	A	12.000
CHIN 102	Elementary Chinese II	4 00	4 00	A	16.000
POSC 373	Politics of The European Union	3 00	3 00	A	12.000
USNA 288N	Engineering Water	3 00	3 00	A	12.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4.000	Term Totals	19 00	19 00	19 00	76.000
Cum GPA:	4.000	Cum Totals	38 00	38 00		152.000

Fall 2017

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

[redacted] [redacted]
Student Name: Sruthi Priyal Venkatachalam

Case Western Reserve University
Unofficial Transcript

Course	Description	Attempted	Earned	Grade	Points
STAT 325	Data Analysis & Linear Models	3.00	3.00	A	12.000
CHIN 201	Intermediate Chinese I	4.00	4.00	A	16.000
ECON 326	Econometrics	4.00	4.00	A	16.000
POSC 370H	China's Foreign Policy	3.00	3.00	A	12.000
RLGN 234	The Ramayana	3.00	3.00	A	12.000
POSC 395	Special Projects	2.00	2.00	A	8.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4 000	Term Totals	19.00	19.00	19.00	76.000
Cum GPA:	4 000	Cum Totals	57.00	57.00		228.000

Spr 2018

Course	Description	Attempted	Earned	Grade	Points
CHIN 202	Intermediate Chinese II	4.00	4.00	A	16.000
MATH 304	Discrete Mathematics	3.00	3.00	A	12.000
POSC 374	Politics of Devel/Global South	3.00	3.00	A	12.000
ECON 338	Law and Economics	3.00	3.00	A	12.000
PHED 65B	Team Build/Leadershp (2nd half	0.00	0.00	P	0.000
POSC 378	International Relations Theory	3.00	3.00	A	12.000
USSY 293C	State, Legitimacy, Insurgency	3.00	3.00	A	12.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4 000	Term Totals	19.00	19.00	19.00	76.000
Cum GPA:	4 000	Cum Totals	76.00	76.00		304.000

Fall 2018

Course	Description	Attempted	Earned	Grade	Points
CHIN 301	Advanced Chinese I	4.00	4.00	A	16.000
STAT 345	Theoretical Statistics I	3.00	3.00	A	12.000
ANTH 102	Being Humn Intr Soc/Cul Anth	3.00	3.00	A	12.000
DSCI 351	Exploratory Data Science	3.00	3.00	A	12.000
PQHS 431	Statistical Methods I	3.00	3.00	A	12.000
PHED 108	Fencing-All Levels	0.00	0.00	P	0.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4 000	Term Totals	16.00	16.00	16.00	64.000
Cum GPA:	4.000	Cum Totals	92 00	92 00		368.000

Spr 2019

Course	Description	Attempted	Earned	Grade	Points
STAT 326	Multivariate Anlys & Data Mng	3 00	3 00	A	12.000
STAT 437	Stochastics Time Series	3 00	3 00	A	12.000
STAT 346	Theoretical Statistics II	3 00	3 00	A	12.000
MATH 201	Intro to Linear Alg for Appl	3 00	3 00	A	12.000
DSCI 353	Data Sci Models & Prediction	3 00	3 00	A	12.000
PHED 50B	Personal Safety Awareness-2nd	0 00	0 00	P	0.000

Term Honor: Dean's High Honors

			Attempted	Earned	Averaged	Points
Term GPA:	4.000	Term Totals	15 00	15 00	15 00	60.000
Cum GPA:	4.000	Cum Totals	107 00	107 00		428.000

			Attempted	Earned	Averaged	Points
Career Totals						
Cum GPA	4.000	Cum Totals	**140.00**	**140.00**	**140.00**	**560.000**

Total Credits Earned 176 00

Non-Course Milestones
- Writing Portfolio Complete

End of Undergraduate Record

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

[redacted] [redacted]
Student Name: Sruthi Priyal Venkatachalam

Case Western Reserve University
Unofficial Transcript

12/01/2020

Degrees/Credentials Earned

Degree/Credential: Master of Arts
Date Awarded: 05/17/2020
Plan: Military Ethics

Academic Program History

Program: Military Ethics (MA)
Completed Program
Military Ethics (MA-B) Masters

Total Credits Earned 33.00

End of Graduate Record

Beginning of Graduate Record

Fall 2019

Course	Description	Attempted	Earned	Grade	Points
INTL 399	INTL Colloquium	3.00	3.00	A	12.000
PHIL 417	War and Morality	3.00	3.00	A	12.000
LAWS 5118	International Law Research Lab	3.00	3.00	A	12.000
LAWS 5121	Intl Criminal Law & Procedure	3.00	3.00	A	12.000
LAWS 4101	International Law	3.00	3.00	A	12.000

			Attempted	Earned	Averaged	Points
Term GPA:	4.000	Term Totals	15.00	15.00	15.00	60.000
Cum GPA:	4.000	Cum Totals	15.00	15.00		60.000

Spr 2020

Course	Description	Attempted	Earned	Grade	Points
PHIL 436	Military Ethics and Int'l Law	3.00	3.00	A	12.000
PHIL 501	Military Ethics MA Capstone	6.00	6.00	A	24.000
PHIL 405	Ethics	3.00	3.00	A	12.000
LAWS 5116	International Human Rights	3.00	3.00	A	12.000
PHIL 484	Ethics and Public Policy	3.00	3.00	A	12.000

			Attempted	Earned	Averaged	Points
Term GPA:	4.000	Term Totals	18.00	18.00	18.00	72.000
Cum GPA:	4.000	Cum Totals	33.00	33.00		132.000

Career Totals			Attempted	Earned	Averaged	Points
Cum GPA	4.000	Cum Totals	33.00	33.00	33.00	132.000

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

April 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to highly recommend Sruthi Venkatachalam for a clerkship in your chambers.

Sruthi grew up in the Columbus, OH area, the daughter of Indian immigrants. She attended Case Western Reserve University, where excelled, earning a BA in Statistics and International Studies summa cum laude and an MA in Military Ethics. She came to Yale Law School after working for nearly two years at the FBI.

I got to know Sruthi as a student in two classes—International Law and Intelligence Law, both of which she took in Spring 2022. In International Law, a large course, Sruthi was a regular participant in class, and she wrote a very strong exam, for which she received an H. In Intelligence Law, a seminar that I co-taught with Bob Litt, former General Counsel at the Office of the Director of National Intelligence, Sruthi wrote two essays. The first evaluates the current case law on the use of the official acknowledgement doctrine to rebut the Glomar response (a response to a request for information that will "neither confirm nor deny" the existence of the information) and argues that a broader, more expansive reading of the doctrine is more in line with the purpose of the doctrine and with the Freedom of Information Act. The second paper examines the Augmenting Intelligence using Machines strategy being deployed to incorporate artificial intelligence into the intelligence community. It explores the transparency issue in artificial intelligence and the dilemma it poses for the intelligence community, and it proposes integrating mandatory impact assessments into the existing oversight regime to help overcome this challenge. Both essays were extremely well researched and very well written, and she again received an H for the course. (On the second, Bob wrote that he learned from it—which is high praise, as he is as informed in this area as anyone in the country.) The writing skill she demonstrated in the class gives me confidence that Sruthi would be an excellent law clerk. This is further reinforced by her work at Just Security, where she has been a senior student editor—a very competitive position given only to students who demonstrate excellent writing and editing skills.

After clerking, Sruthi is interested in pursuing a career in public service. As I mentioned at the outset, she worked for almost two years at the FBI. In her summers during law school, she gained further experience as an intern at the Department of Justice in the Public Integrity Section and as a Summer Associate at Skadden Arps. She has also worked as an extern for Judge Victor Bolden, which has given her valuable insight into legal practice. These experiences have prepared her to be an excellent law clerk.

For these reasons, I highly recommend Sruthi for a position as a law clerk. If you have any questions, please contact me at oona.hathaway@yale.edu, or by phone at 203-436-8969 or via my cell at 203-343-8482.

Sincerely,

Oona A. Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law

April 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to you on behalf of Sruthi Venkatachalam, a third-year student at the Yale Law School. Sruthi will graduate this spring, after a most distinguished career at the Law School. She has applied for a clerkship in your chambers. Sruthi has my enthusiastic support.

Last fall, Sruthi was one of two Coker Fellows assisting me in teaching my class in constitutional law. Constitutional law is one of four courses that first-term students at Yale are all required to take. My class was what we call a “small group”—a seminar-sized class of sixteen. Each first-term student takes one of his or her required classes in a small-group format. The idea is to allow for more conversational interaction and to give students the opportunity to develop a closer relation with one of their professors. Those teaching small groups are allowed to choose two third-year students to assist them. I had more than sixty applicants for my two Coker positions. Sruthi was one of the two I chose. I was thrilled that I did.

Over the course of the term, and then after, Sruthi and I met often to discuss matters pertaining to the small group. Sometimes the issues were procedural or even personal. When should we schedule a make-up class? What is the best day to plan an outing to Block Island, where I live in the summer and fall? How is this or that particular student doing? Are there any reasons to be concerned?

Sometimes the issues were substantive. What is the best way of introducing students to the ins and outs of the Commerce Clause, and how can the cases from Gibbons to Sibelius be most effectively used as a window into (some of) the complexities of American federalism? Which of the many school desegregation cases that followed Brown are the best ones to illustrate the dimensions of the problem and the Supreme Court’s shifting perspective(s) on it?
On the personal side, Sruthi was unfailingly wise and kind. She knew what our students needed and how best to help them. It is not an exaggeration to say that by the end of the term, they all loved her. She was always available; always understanding; always clear in her directions and advice. My first-term students could not have had a better third-year friend.

On the substantive side, my many, many conversations with Sruthi were invariably stimulating and helpful to me. Sruthi has a first-rate mind. She thinks with uncommon clarity and range. When I spoke with her about the cases on our syllabus, she always had a sure grasp of their details, down to the molecular level, and a highly intelligent, often imaginative, understanding of their implications. I do not have a shadow of a doubt that Sruthi could have taught the course herself. I would have enjoyed being her student.

Toward the end of the term, the students were required to brief and argue a case then before the Supreme Court (303 Creative v. Eleni). Sruthi and her co-Coker chose the case; worked intensively with each student in the class on his or her brief; and joined me on the bench for the oral arguments in the final week of the semester.

The briefs were uniformly excellent. In part, this was the result of the effort and intelligence the students themselves put into their work. But I know to a certainty that the briefs would not have been nearly as good, or the arguments as forceful, if Sruthi had not devoted weeks of her time to helping the students write and prepare. They all recognized this and at our farewell dinner, joined in a raucous and sustained round of applause for their two magnificent Cokers.

Everything I have seen of Sruthi—and I have seen a great deal—leads me to believe, with utter confidence, that she will be a splendid law clerk. Sruthi is brilliant; hardworking; punctual; warm-hearted and generous of spirit. What else could a judge want? What else could anyone want? If Sruthi joins you in your chambers, you will be as pleased with your decision as I have been with mine to ask her to be my Coker Fellow last fall.

Sincerely,

Anthony Kronman

Anthony Kronman - anthony.kronman@yale.edu - 203-432-4934

April 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Sruthi Venkatachalam who is applying for a clerkship in your chambers.

Sruthi took an introductory constitutional law course with me and then served has served as my research assistant over the last year and was totally devoted in the role. She worked on several projects. Most were historical in focus. One project examined how Burger Court decisions on wealth inequality evolved in the 1970s for which Sruthi did archival work. Another project involved research into the social movement roots of “reasons bans” on abortion (prohibiting abortion on the basis of race or sex or disability). She has also researched the Meese Justice Department’s early involvement in originalism in the 1980s. Sruthi helped proofed the manuscript of my recent article The Politics of Memory. Sruthi did meticulous work on each of these projects. None has involved writing a memo on a question of law, however.

It has been a great pleasure to with Sruthi. She is responsible and precise in handling research assignments and is full of enthusiasm and curiosity of a kind that I think would make her an valuable assistant in chambers, whether working independently or in teams.

Please call me at 203-661-6181 if I can be of further assistance in your decision.

Sincerely,

Reva Siegel

Reva Siegel - reva.siegel@yale.edu - 203-432-6791

Sruthi Venkatachalam
Writing Sample
Advanced Written Advocacy Assignment Four

This brief was written for the final assignment in Advanced Written Advocacy.

The basic factual premise is as follows:
F.M., a minor who attends Boston Collaborative High School (BCHS), posted a short video on TikTok. In the video, she says "I wish we were still on summer break. If just one of you would call the school and threaten to shoot a few teachers the next day, we'd get the day off. And if someone would make that threat every night, we'd never need to go to school." She then laughed and did a TikTok dance-move. F.M. did not identify which school she attended in the video. She did not specify where she lived, but her username, "BostonFaith," indicated her location. Many of her followers were also BCHS students who recognized her as their classmate. Another student at the school, whose mom was a math teacher at BCHS, saw the video and shared it with his mom. She then forwarded a copy of the video to the school's principal, Ruth Tran.
The following day, Principal Tran called F.M.'s mother to state that F.M. had made threatening remarks and would be suspended for two weeks, effective immediately. F.M. filed a motion for a TRO to block the suspension.

This assignment is an appellate argument briefing the issue of whether a TRO should be granted. We were told only to address the substantive issue of whether the plaintiff would succeed on the merits of securing a TRO. The assignment assumes that another attorney would brief whether a TRO could be appealed on interlocutory appeal. This sample covers one factor of the TRO analysis, the likelihood of success on the merits.

This brief supports the position of BCHS and the City of Boston. It follows a lower court decision where the BCHS succeeded on the merits and F.M. appealed the ruling.

INTRODUCTION

This case concerns Boston Collaborative High School's ("BCHS") obligation to create a secure environment for its students and staff. Such a responsibility requires BCHS to impose sensible and proportionate punishments on those who threaten that environment. F.M., a BCHS student, created a video on the popular social media site TikTok in which she suggested students should make threats against teachers to force school cancellations. J.A. 35. Upon being made aware of the TikTok, BCHS' principal Ruth Tran ("Tran") suspended F.M. for two weeks for her "threatening remarks." J.A. 36.

F.M. filed a motion for a temporary restraining order ("TRO") to halt the suspension. J.A. 23-33. In her motion, the Plaintiff argued the school's actions infringed upon her First Amendment rights. J.A. 27-33. The district court rejected this argument. It noted that speech like F.M.'s video is "plainly within the realm of speech schools *can* and *should* act upon" while the failure to do so may be "grossly irresponsible." J.A. 45 (emphasis added). The plaintiff filed a timely interlocutory appeal seeking to reverse the lower court opinion. J.A. 52-70.

The motion should not be granted since the Plaintiff has failed to prove a likelihood of success on the merits. The Plaintiff's arguments are wrong as a matter of law. Schools have the authority to regulate speech, like F.M.'s TikTok, that would "materially and substantially interfere" with school activities. *See Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 514 (1969). The fact this speech occurred off-campus in no way alters the conclusion. The Supreme Court, too, has emphasized that in matters of school discipline, judges must give deference to school administrators. *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Col. Of Law v. Martinez*, 561 U.S. 661, 686 (2010). For these reasons, the Defendants respectfully request that this Court affirm the district court's judgement and uphold F.M.'s suspension.

STATEMENT OF FACTS

School gun violence occurs with unfortunate frequency and is one of the most serious threats school administrators face. On January 7, 2023, a six-year old boy shot a teacher in his elementary school. Livia Albeck-Ripka & Eduardo Medina, *6-Year-Old Shoots Teacher at Virginia Elementary School*, N.Y. Times, Jan. 11, 2023. On May 24, 2022, a former student of Robb Elementary School in Uvalde, Texas murdered nineteen students and two teachers. Rick Rojas & Edgar Sandoval, *The Excruciating Echo of Grief in Uvalde*, N.Y. Times, Aug. 8. 2022. Since 1999, over 331,000 children from 354 schools have been directly impacted by school shootings. John Woodrow Cox et.al, *School Shooting Database*, Wash. Post, Jan. 9. 2023. Administrators must be vigilant to ensure their school is not the scene of the next tragedy. It is with this knowledge that Tran acted.

F.M. is a 17-year-old student at BCHS. She maintains a public TikTok profile, BostonFaith, where she posts short videos. J.A. 1. She has more than 500 followers, including all twenty-three of her classmates and dozens of other BCHS students. J.A. 2-3. On November 1, 2022, F.M. posted a video on her TikTok where she said, "I wish we were still on summer break. If just one of you would call the school and *threaten to shoot a few teachers* the next day, we'd get the day off. And if someone would make that threat every night, we'd never need to go to school." J.A. 34-35 (emphasis added). She then laughed and did a TikTok dance move. J.A. 34-35.

Another student at BCHS, whose mom is a math teacher at the school, was alarmed by the video. In a declaration he submitted, he stated:

> I didn't think that F.M. was seriously going to threaten the school, but she sent it out to everyone. I can't say the same for every other kid at this school who saw the video. It wouldn't be a huge deal except F.M. did essentially talk about people threatening a school shooting. I felt like I had to warn my mom because I'd rather be safe than sorry. I didn't want to feel like I could have done something if the worst happened, and someone took it too far.

J.A. 5. Based on these concerns, he passed the video along to his mom, who reported the video to Tran. J.A. 5.

Principal Tran watched the Tiktok and was alarmed. It had been viewed over 200 times, with several users commenting on the content. J.A. 13-14. One TikTok user, commented "TOTALLY! Gonna [sic] do Burcham[1] first, maybe our test will get cancelled or we'll get a sub or something." J.A. 14. Another user, commented "PLEASE. I'll call today, whos [sic] doing tomorrow? Tran is going to FREAK." J.A. 14. Later investigations revealed that these comments were posted by two BCHS students.

Tran responded to the TikTok with standard procedures. Under §5.2 of the Student Handbook, BCHS holds a strict "zero tolerance policy" towards "any act, threat, or suggestion of violence against BCHS, teachers, students, or any member of the BCHS community." J.A. 4. Tran correctly determined that F.M.'s video constituted a threat of violence to the school's teachers and that F.M. had violated §5.2 of the Student Handbook. On November 2, 2022, Tran called F.M.'s mother to inform her that F.M. had made "threatening remarks against the school community" and that, as a result, F.M. was suspended for two weeks, effective immediately. J.A. 36.

LEGAL STANDARD

Courts must weigh four factors when considering whether to grant a TRO: the likelihood of success on the merits, whether the plaintiff will suffer irreparable harm if relief is denied, a comparison between harm to the plaintiff if preliminary relief is not granted and harm to the defendant if the relief is granted, and the effect of the preliminary relief on the public interest. *Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 92 (1st Cir. 2020).

[1] Joanna Burcham is a math teacher at BCHS high school.

The likelihood of success on the merits is the "main bearing wall" of the test. *Corporate Techs., Inc. v. Harnett,* 731 F.3d 6, 9 (1st Cir. 2013). To demonstrate a likelihood of success, plaintiffs must establish more than a "mere probability of success;" instead, they must show a "strong likelihood they will prevail." *Sindicato Puertorriqueno de Trabajadores v. Fortuno,* 699 F.3d 1, 10 (1st Cir. 2012).

This Court reviews the grant or denial of a TRO for abuse of discretion. *Jean v. Mass. State Police,* 492 F.3d 24, 26 (1st Cir. 2007). Separately, findings of law when determining the likelihood of success on the merits are reviewed *de novo*. *OfficeMax, Inc. v. Levesque,* 658 F.3d 94, 97 (1st Cir. 2011).

ARGUMENT

1. The plaintiff failed to prove a substantial likelihood of success on the merits.

The Plaintiff has not proved a substantial likelihood of success on the claim that BCHS violated F.M.'s First Amendment rights. To the contrary, the court below correctly denied the Plaintiff's motion for a TRO. First, F.M.'s TikTok video falls within the exception the Supreme Court articulated in *Tinker* since the video could reasonably be foreseen to disrupt school activities. Second, the Plaintiff's argument that BCHS cannot regulate off-campus speech, like F.M.'s TikTok, fails. The Supreme Court has recognized schools may impose proportionate and reasonable punishment on certain kinds of off-campus speech, like F.M.'s TikTok. Finally, courts have held school administrators should be given deference in their disciplinary decisions.

A. F.M.'s TikTok video was reasonably foreseen to substantially disrupt school activities.

Students do not lose their constitutional rights at the "schoolhouse gate." *Tinker,* 393 U.S. at 506. Yet First Amendment rights may be limited "in light of the special characteristics of the school environment." *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260, 266 (1988). School

officials may restrict student speech if they reasonably "forecast substantial disruption . . . of school activities." *Tinker*, 393 U.S. at 514.

Courts analyze all facts known to the administrator at the time of discipline to determine whether they acted reasonably. *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d. 12, 31 (1st Cir. 2020). Given the school's policy on speech threatening the school community and the public nature of the TikTok, Principal Tran reasonably determined that F.M.'s speech would cause substantial disruptions of school activities.

Content advocating for threats upon a school's campus implicates legitimate security concerns. A school has a duty to maintain safety on school grounds. *See Lowery v. Euverard*, 497 F.3d 584, 596 (6th Cir. 2007). BCHS takes this responsibility seriously and maintains a "zero-tolerance policy" for threats or suggestions of violence against any member of the school community. J.A. 4. Tran assessed that F.M. violated this policy. F.M. not only suggested threats of violence, but actively encouraged it. She directly targeted the school community by asking others to "threaten to shoot a few teachers." J.A. 36.

This violation would result in a substantial disruption of school activities. The school administrative guidelines hold that the school must enter a Level Two Lockdown whenever there is a violation of the zero-tolerance policy. J.A. 15-22. At a minimum, that would involve closing the school entrance and exits, requiring students to remain in their classrooms during class and lunch periods, informing the local police station to send two patrols to the school, informing all the students' parents, addressing any calls or concerns parents have, cancelling any events both during and after school for that day, and consulting with the local police department and superintendent's office to take any other steps deemed necessary. J.A. 18-22.

Tran was familiar with these policies and knew that they would be applied without

exception. The national concern of school shootings and gun violence only lend support to the reasonableness of her actions. See *LaVine v. Blain Sch. Dist.*, 257 F.3d 981, 987 (9th Cir. 2001) (noting the importance of context and emphasizing the national concern around school shootings in assessing the school's reasonableness). Given the unfortunate frequency of school gun violence, the zero-tolerance policy was strictly enforced by BCHS. Thus, Tran reasonably foresaw the chain reaction that F.M.'s TikTok would create, resulting in substantial disruption of school activities.

It is widely accepted that school administrators may punish individuals who threaten the school environment. While the First Circuit has yet to address whether schools may suspend a student who threatened the school community, other circuits have consistently upheld such penalties. For instance, in *Wisniewski v. Board of Education*, the Second Circuit upheld the suspension of a student for threatening conduct. In that case, a student had sent an I.M. message with an icon "depicting and calling for the killing of his teacher." 494 F.3d 34, 38 (2007). While administrators determined that the student had no truly violent intent, Court concluded that, for this conduct, "*Tinker* affords *no* protection against school discipline." *Id.* at 39 (emphasis added).

Similarly, in *Wynar v. Douglas County School District*, the Ninth Circuit upheld a suspension for a student who threatened teachers on a MySpace page. 728 F.3d 1062, 1065 (2013). The Ninth Circuit decided that, considering the violent nature of the message, "school officials have a duty to prevent the occurrence." *Id.* at 1070. The court held it was reasonable to take the student's message seriously because "the harm described would have been catastrophic if it occurred." *Id.* at 1071. Therefore, it was reasonable school would be disrupted as "considerable time" would be dedicated to the fallout. *Id.* Other circuits have ruled in the same way. *See, e.g.*, *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d, 379, 393 (5th Cir. 2015) (noting a "paramount need" to address threats against the school community).

The Plaintiff argues that the suspension is unreasonable because of the TikTok's context. She argues that F.M. is a high performing student with no disciplinary record or history of behavioral issues, suggesting she would be unlikely make threats. J.A. 60-61. Furthermore, she claims F.M. was clearly joking, noting the laughter and dance in the video as well as the "ludicrous" suggestion that someone would call in a threat every single day. J.A. 62-65. The Plaintiff argues these elements make it difficult to believe that anyone would take her seriously so forecasting a substantial disruption to school activities was unreasonable. J.A. 67. Both of these responses fail.

To start, being a high performing student is not a license to encourage classmates to threaten teachers. Courts have upheld a school's disciplinary action as reasonable even when the student was a well-regarded member of the school community. *Doninger v. Niehoff*, 527 F.3d 41, 44-45 (2d Cir. 2008) (upholding a Student Council leader's punishment for a vulgar blog post concerning school administrators). Moreover, whether F.M., individually, would threaten teachers misses the point. She posted on a public TikTok account. She actively encouraged and solicited threats. Her statements were for a broader audience. The issue is not just whether F.M. is inclined to act on her words; rather, whether any viewer might also be inclined. The potential scope of the threat poses a greater problem to BCHS. Even if it were *known* that F.M. was not a threat, her actions created more than two hundred *unknowns*, because each person who saw her video might have called in a threat. The school does not know how her followers, including dozens of BCHS students, will respond. Given both the violent subject matter and the scope of the issue, Tran reasonably predicted the school would take serious measures, disrupting daily activities.

The alleged "joking nature" of the video, suggested by laughter and dancing, is also immaterial. Even if F.M. intended the video to be a joke, her intent is irrelevant. *See Norris ex rel. A.M.*, 969 F.3d at 25 (citing *Cuff ex rel. B.C. v. Valley Cent. Sch. Dist.*, 677 F.3d 109, 113 (2d Cir.

2012)). The only relevant inquiry is whether there was a reasonably foreseeable disruption to the school based on her speech. *Id.* There are several cases where courts have held that even if a student's threats against the school community were meant as jokes, the school's disciplinary action was appropriate. *See, e.g.*, *Wynar*, 728 F.3d at 1066 ("We do not discredit [the student's] insistence he was joking; our point is that it is reasonable for Douglas County to proceed as though he was not.").

Furthermore, the Plaintiff's argument betrays a misunderstanding of the medium of TikTok. The mere presence of dancing and laughter does not suggest that no one would take F.M.'s words seriously. TikToks frequently juxtapose serious messages with comedic elements. *See, e.g.*, Frankie Lantican, *A TikTok Trend Has People Sharing Traumatic Experiences to a Pop Song*, Vice, Dec. 7, 2020. The dancing and laughter alone do not make it clear F.M. was joking.

Moreover, even if it would be unreasonable to believe a student would call in a threat every day to cancel school forever, it is reasonable to believe that students may call in a threat at least one time. Some of the comments to F.M.'s TikTok named specific teachers to target while others expressed strong enthusiasm. J.A. 13-14. At least one student feared that threats would be called to the school. J.A. 5. Therefore, it was reasonable for the school to believe that at least one threat may be called, requiring disruptive actions.

Principal Tran was aware of all of the above facts. When making her decision, she reasonably foresaw that F.M.'s solicitation of threats would disrupt the school. These facts indicate that the Plaintiff has not demonstrated a strong likelihood she will prevail on the merits.

B. F.M.'s TikTok video is within the range of off-campus activity that BCHS can regulate.

The Supreme Court has held that schools can regulate some off-campus behavior. *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 141 S. Ct. 2038, 2045 (2021). The Plaintiff argues that schools

cannot regulate this kind of off-campus speech. J.A. 68. The District Court rejected Plaintiff's claim. J.A. 47-50. The District Court held that, while there is no First Circuit standard for when a school can regulate off-campus speech, it would be "faulty" if schools cannot regulate speech like F.M.'s. J.A. 47. In fact, the District Court noted that "if schools *can* regulate some forms of off-campus speech, speech like F.M.'s must plainly be within the school's ambit." J.A. 50.

The District Court's analysis is bolstered by the fact that many of the reasons the *Mahanoy* Court used to caution against off-campus speech regulation do not apply to this case. The Supreme Court noted that courts should be skeptical of attempts to regulate off-campus speech since it would amount to constant regulation of a student's speech. *Mahanoy Area Sch. Dist.*, 141 S. Ct. at 2047. Particularly for "political or religious speech," the school has a "heavy burden" to justify judicial action. *Id.* This case, however, does not involve political or religious speech. It involves a student expressing they do not wish to attend school and encouraging others to threaten teachers to cancel school. The fear of constant regulation is also mitigated by the fact the F.M.'s speech is directly addressing and targeting the school, implicating their direct interest. Not all speech would be expected to do the same, so a fear of constant regulation would be unwarranted.

The *Mahanoy* Court also highlighted a school's duty to protect unpopular ideas and facilitate the "marketplace of ideas." *Id.* While a pivotal part of a school's educational mission, "the marketplace of ideas" is not implicated here. If F.M. had expressed an unpopular opinion about gun violence, public schools, or any school policy, it would be a different matter. But that was not the case. At most, she expressed a view that vacation is better than school. While she is free to express that view, it did not result in her suspension. Rather, Tran's concern was F.M.'s call for students to make threats. The "educational" value of F.M.'s statement does little to diminish the school's interest in her call for threats on teachers.

These factors suggest that it would be appropriate to regulate F.M.'s TikTok. While neither the *Mahanoy* Court nor the First Circuit have outlined the limits of off-campus speech schools can regulate, the four circuits have crafted rules to determine whether a school's off-campus regulation of student speech is appropriate. Under any of these standards, BCHS would be permitted to suspend F.M. for her TikTok.

The Fourth Circuit, for instance, held that where "speech has a sufficient nexus with the school," school administrators can regulate off-campus speech. *Kowalski v. Berkely Cnty. Sch.*, 652 F.3d 565, 577 (2011). The court held that a MySpace page dedicated to harassing and bullying another student could be grounds to suspend a student. *Id.* Despite the fact the webpage was created off-campus, the speech could "reasonably be expected to reach the school or impact the school environment." *Id.* at 573. The student also knew that the "fallout from her conduct and the speech within the [MySpace page] would be felt by the school itself." *Id.* All of these concerns apply with equal force to the present case. F.M. posted a public TikTok to an account over eighty of her classmates follow. She understood that her audience included her classmates and it was reasonable that the consequences of her conduct would be felt by the school community, especially if one student elected to call in a threat. Her solicitation of threats against the school community and the audience the message was delivered to establish a nexus to the school, satisfying the Fourth Circuit rule.

Both the Second and Eighth Circuits have held schools can regulate off-campus speech that would fail the *Tinker* test and if it is reasonable that the speech will reach the school community. In *Doninger v. Niehoff*, the Second Circuit held that a disruptive blog posting about a school activity "was reasonably foreseeable . . . to reach school property." 527 F.3d 41, 50 (2d Cir. 2008). F.M.'s TikTok meets this standard as well. A TikTok, targeting the school community and

sent to those in the school community, would foreseeably reach the school. Similarly, in *S.J.W. v. Lee's Summit R-7 School District*, the Eighth Circuit upheld a student's punishment for their vulgar blogsite mocking black students and discussing fights at the school. 696 F.3d 771, 773 (8th Cir. 2012). The court held that the "posts were directed at [the school]" and "could reasonably be expected to reach the school or impact the environment." *Id.* at 778. Under this standard, Tran's actions were permissible.

Finally, the Ninth Circuit, while not creating a broad rule, held that at the minimum, "when faced with an identifiable threat of school violence, schools may take disciplinary action in response to off-campus speech that meets the requirements of *Tinker*." *Wynar*, 728 F.3d at 1069. On its face, F.M.'s TikTok meets this standard. She created an identifiable threat of school violence by actively calling for others to make threats against the school. And, as previously established, her TikTok would foreseeably cause substantial disruption to the school. Under the Ninth Circuit rule, Tran thus acted appropriately and lawfully by suspending F.M. for her actions.

The Plaintiff argues that the school's interest in F.M.'s off-campus speech is diminished because it is not apparent that she is referring to BCHS. As was the case in *Mahanoy*, F.M. "appeared outside school hours from a location outside the school" and she "did not identify the school in her posts." *Mahanoy Area Sch. Dist.*, 141 S.Ct. at 2046. This argument fails since, unlike in *Mahanoy*, F.M.'s audience understands that she is referring to BCHS. Her profile is followed by all her classmates and dozens of other students at her school. J.A. 1-3. In the past, F.M. has also posted several other TikTok's from inside BCHS or referring to BCHS. J.A. 6-12. So, even if not immediately apparent, it was apparent to her audience which school community she was referencing. Her followers' implied understanding is enough to implicate the school's concern since it was plain to her viewers that she intended threats to be called to BCHS. Thus, the off-

campus nature of F.M.'s speech does not affect the BCHS' ability to punish her for it.

C. This Court should provide deference to Tran's decision to suspend F.M.

The Supreme Court has repeatedly held that courts should provide deference to the decisions of school administrators. Understanding the unique position of school administrators, the Court has "cautioned courts in various contexts to resist substituting their own notions of sound educational policy for those of the school authorities which they review." *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Col. Of Law v. Martinez*, 561 U.S. 661, 686 (2010). In fact, the Court has made clear that the public education system "*relies* necessarily upon the discretion and judgement of school administrators and school board members." *Wood v. Strickland*, 420 U.S. 308, 326 (1975) (emphasis added).

Thus, courts should respect the role of school administrators and defer to administrators' decisions on student speech so long as the judgement is "reasonable". *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d. 12, 31 (1st Cir. 2020). Given F.M.'s active call for threats against the school, the public medium, and the concerning nature of the threats, Tran acted reasonably by forecasting disruption at the school and suspending F.M.

CONCLUSION

For the preceding reasons, the Plaintiff has failed to demonstrate a likelihood she will succeed on the merits. For that reason, the lower court decision should be affirmed.

Applicant Details

First Name	**Katherine**
Last Name	**Viti**
Citizenship Status	**U. S. Citizen**
Email Address	**vitik2326@gmail.com**
Address	**Address** **Street** **895 Campus Dr #333D** **City** **Stanford** **State/Territory** **California** **Zip** **94305** **Country** **United States**
Contact Phone Number	**5409313946**

Applicant Education

BA/BS From	**University of Virginia**
Date of BA/BS	**May 2021**
JD/LLB From	**Stanford University Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011**
Date of JD/LLB	**June 16, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Stanford Technology Law Review** **Stanford Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Sonne, James
jsonne@law.stanford.edu
650-723-1422

Zambrano, Diego
dzambrano@law.stanford.edu

Letter, Dean's
deansletter@law.stanford.edu
650-723-4455

Reese, Elizabeth H.
ereese@law.stanford.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

KATHERINE VITI
895 Campus Drive #333D, Stanford, CA 94305 | (540) 931-3946 | katherineviti@stanford.edu

June 12, 2023

The Honorable Judge Jamar K. Walker
U.S. District Court for the
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year at Stanford Law School and write to apply to the 2024-2025 clerkship with you in the Western District of Virginia. I grew up in Clarke County, Virginia, attended the University of Virginia, and am extremely excited to return to Virginia to clerk and practice law. My extensive personal ties to Virginia make me particularly invested in clerking with you.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professors Diego Zambrano, Elizabeth Reese, and James Sonne are providing letters of recommendation to support my application. I welcome the opportunity to further discuss my qualifications and interest; thank you for your consideration.

Sincerely,

Katherine Viti

Katherine Viti

KATHERINE VITI

(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

EDUCATION

Stanford Law School Stanford, CA
J.D., expected June 2024
Journals: *Stanford Law Review* (Vol. 76: Articles Editor, Vol. 75: Member Editor); *Stanford Technology Law Review* (Vol. 26: Senior Articles Editor, Vol. 25: Member Editor)

University of Virginia Charlottesville, VA
B.A. in Political Philosophy, Policy, and Law; Slavic Languages and Literature; minor in English, May 2021
Honors: High Distinction in Political Philosophy, Policy, and Law, Dean's List (all eligible semesters), Raven Society; Pertzoff Prize in Russian Studies; Echols Scholar
Thesis: "The Legal Age of Majority and Equal Citizenship"
Activities: Jefferson Literary and Debating Society; Program on Constitutionalism and Democracy; UVA in Oxford, London School of Economics International Summer School; Books Behind Bars (Student Facilitator)

EXPERIENCE

U.S. Department of State, Office of the Legal Advisor, Washington, DC *Extern*, September – December 2023

Akin Gump Strauss Hauer & Feld LLP, Los Angeles, CA *Summer Associate*, June – August 2023

Stanford Law School

Research Assistant, Professor Erik Jensen *Research Assistant,* April 2023- present
Edited draft Rwandan law textbook. Worked with American and Rwandan legal academics. Assisted in bringing book to publication.

Religious Liberty Clinic *Clinic Student*, April – June 2023
Counseled client on religious liberty issues related to access to education. Wrote 9th Circuit reply brief in *Guardado v. State of Nevada* (litigation on behalf of former inmate racially discriminated against and prevented from practicing his religion). Developed advocacy plan to advance religious accommodations awareness in healthcare settings. Researched religious liberty and other legal issues and worked closely with teams and partners in completion of all these projects.

Trends in Global Judicial Reform Policy Lab *Teaching/Research Assistant*, June 2022 – present
Conducted literature review on judicial vetting. Scheduled and managed visits of four foreign Supreme or Constitutional Court Justices to Stanford. Wrote syllabus and managed logistics of weekly seminar with 18 students. Assisted with design of research questionnaire and managed research trip to Bogota to interview judges. Oversaw creation of website to present findings.

Supreme Court of Rwanda, Kigali, Rwanda *Law Clerk to the Chief Justice*, June – August 2022
Researched virtual criminal hearing guidelines in jurisdictions worldwide. Served on committee and wrote draft remote hearing guidelines for judiciary of Rwanda. Drafted memorandum on comparative transitional justice responses to mass atrocities.

Charlottesville Debate League, Charlottesville, VA *Outreach Chair/Teacher*, September 2018 – May 2021
Taught public forum debate and impromptu speaking to middle schoolers. Implemented program by working with administrators in local school system. Adapted program to be conducted virtually during COVID.

University of Virginia

Echols Program *Advisory Committee*, March 2019 – May 2021
Created and distributed programming for admitted students, including panels, tours, and personalized visits; transitioned programming to be virtual during COVID. Managed student team and social media. Served on Echols Council and on Advisory Board with faculty, staff, students, and alumni governing long-term future of program. Served as Head Ambassador and Chair of Recruitment from May 2019 through April 2021.

Maxine Platzer Lynn Women's Center Free Legal Clinic *Legal Intern*, May – August 2020
Provided administrative support to attorneys in free legal consultations on issues including contract, family, and property law. Scheduled clients and attorneys by phone and email. Adapted clinic to be virtual during COVID and provided COVID-specific legal resources.

Book Traces Project *Managing Research Assistant*, October 2018 – May 2019
Researched and compiled data on library collections. Organized site visits, handled rare books, and led research trips.

ADDITIONAL INFORMATION

Languages: French (intermediate low); Russian (advanced low);
Interests: travel, particularly cross-country road trips; concerts; cooking

KATHERINE VITI

(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

RECOMMENDERS

Professor Diego Zambrano
Stanford Law School
(650) 721-7681
dzambran@law.stanford.edu

Professor James Sonne
Stanford Law School
(650) 723-1422
jsonne@law.stanford.edu

Professor Elizabeth Reese
Stanford Law School
(505) 263-5021
ereese@law.stanford.edu

REFERENCES

Erik Jensen
Stanford Law School/Liaison to Supreme Court of Rwanda
(650) 725-4287
egjensen@stanford.edu

Leigh Ann Carver
Maxine Platzer Lynn Women's Center at the University of Virginia
(434) 981-8416
lac4g@virginia.edu

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Viti,Katherine L
Student ID : 06603564

Print Date: 06/09/2023

-------- Academic Program --------

Program : Law JD
09/20/2021 : Law (JD)
Plan
Status Active in Program

-------- Beginning of Academic Record --------

2021-2022 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	201	CIVIL PROCEDURE I	5.00	5.00	H	
Instructor:		Zambrano, Diego Alberto				
LAW	205	CONTRACTS	5.00	5.00	H	
Instructor:		Nyarko, Julian				
LAW	219	LEGAL RESEARCH AND WRITING	2.00	2.00	P	
Instructor:		Handler, Nicholas A				
LAW	223	TORTS	5.00	5.00	P	
Instructor:		Mello, Michelle Marie Studdert, David M				
LAW	240J	DISCUSSION (1L): RELIGION, IDENTITY AND LAW	1.00	1.00	MP	
Instructor:		Sonne, James Andrew				

LAW TERM UNTS: 18.00 LAW CUM UNTS: 18.00

2021-2022 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	203	CONSTITUTIONAL LAW	3.00	3.00	H	
Instructor:		Meyler, Bernadette				
LAW	207	CRIMINAL LAW	4.00	4.00	P	
Instructor:		Weisberg, Robert				
LAW	224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	P	
Instructor:		Valeska, Tyler Breland				
LAW	807E	POLICY PRACTICUM: GLOBAL JUDICIAL REFORMS	2.00	2.00	MP	
Instructor:		Zambrano, Diego Alberto				
LAW	7846	ELEMENTS OF POLICY ANALYSIS	1.00	1.00	MP	
Instructor:		Brest, Paul Herman, Luciana Louise MacCoun, Robert J				

LAW TERM UNTS: 12.00 LAW CUM UNTS: 30.00

2021-2022 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	217	PROPERTY	4.00	4.00	P	
Instructor:		Thompson Jr, Barton H				
LAW	224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	P	
Instructor:		Valeska, Tyler Breland				
LAW	5013	INTERNATIONAL LAW	4.00	4.00	P	
Instructor:		Weiner, Allen S.				
LAW	7013	GENDER, LAW, AND PUBLIC POLICY	3.00	3.00	P	
Instructor:		Russell, Margaret Mary				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 43.00

2022-2023 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	3504	U.S. LEGAL HISTORY	3.00	3.00	H	
Instructor:		Ablavsky, Gregory R				
LAW	5044	THIRD WORLD APPROACHES TO INTERNATIONAL LAW, BORDERS, AND MIGRATION	2.00	2.00	H	
Instructor:		Achiume, Emily T				
LAW	7030	FEDERAL INDIAN LAW	3.00	3.00	P	
Instructor:		Reese, Elizabeth Anne				
LAW	7036	LAW OF DEMOCRACY	3.00	3.00	P	
Instructor:		Persily, Nathaniel A.				

LAW TERM UNTS: 11.00 LAW CUM UNTS: 54.00

2022-2023 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	400	DIRECTED RESEARCH	3.00	0.00		
Instructor:		Spaulding, Norman W.				
LAW	2401	ADVANCED CIVIL PROCEDURE	3.00	3.00	P	
Instructor:		Zambrano, Diego Alberto				
LAW	5801	LEGAL STUDIES WORKSHOP	1.00	1.00	MP	
Instructor:		Meyler, Bernadette				
LAW	7001	ADMINISTRATIVE LAW	4.00	4.00	P	
Instructor:		Freeman Engstrom, David				

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Viti,Katherine L
Student ID : 06603564

LAW TERM UNTS: 8.00 LAW CUM UNTS: 62.00

2022-2023 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	918A	RELIGIOUS LIBERTY CLINIC: PRACTICE	4.00	0.00		
Instructor:		Huq, Zeba Azim Sonne, James Andrew				
LAW	918B	RELIGIOUS LIBERTY CLINIC: CLINICAL METHODS	4.00	0.00		
Instructor:		Huq, Zeba Azim Sonne, James Andrew				
LAW	918C	RELIGIOUS LIBERTY CLINIC: CLINICAL COURSEWORK	4.00	0.00		
Instructor:		Huq, Zeba Azim Sonne, James Andrew				

LAW TERM UNTS: 0.00 LAW CUM UNTS: 62.00

END OF TRANSCRIPT

Katherine Louise Viti

06/02/2021

Degrees Conferred

Confer Date:	05/23/2021
Degree:	Bachelor of Arts
Degree Honors:	with High Distinction
Major:	Interdisciplinary - Political Philosophy, Policy, and Law
Option:	Distinguished Major
Major:	Slavic Languages and Literatures
Minor:	English

Test Credits

Test Credits Applied Toward Arts & Sciences Undergraduate

Transferred to Term 2017 Fall as				
BIOL	2100	IntroBio w/Lab:Cell & Genetics	TE	4.00
Repeated:		Repeat-Include in GPA Only		
BIOL	2200	Intro Bio w/Lab: Orgnsm & Evol	TE	4.00
Repeated:		Repeat-Include in GPA Only		
ENGL	1000T	Non-UVa Transfer/Test Credit	TE	3.00
ENWR	1000T	Non-UVa Transfer/Test Credit	TE	0.00
HIST	2000T	Non-UVa Transfer/Test Credit	TE	3.00
MATH	1310	Calculus I	TE	4.00
MATH	1320	Calculus II	TE	4.00
PLAP	1000T	Non-UVa Transfer/Test Credit	TE	3.00
STAT	2120	Intro to Statistical Analysis	TE	3.00
Test Credit Total:				20.00

Transfer Credits

Transfer Credit from Lord Fairfax Cmty College
Applied Toward Arts & Sciences Undergraduate Program

Incoming Course				
HIS DE	122	US History II DE		
Transferred to Term 2017 Fall as				
HIST	1000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
HIS DE	121	US History I DE		
Transferred to Term 2017 Fall as				
HIST	1000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
FRE	212	Intermediate French Conversati		
Transferred to Term 2017 Fall as				
FREN	2000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
FRE	211	Intermediate French Conversati		
Transferred to Term 2017 Fall as				
FREN	2000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
FRE	112	Conversation in French II		
Transferred to Term 2017 Fall as				
FREN	2000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
FRE	111	Conversation in French I		
Transferred to Term 2017 Fall as				
FREN	2000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
ENG	112	Writing		
DE				
Transferred to Term 2017 Fall as				
ENWR	1000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
ENG	111	Writing		
DE				
Transferred to Term 2017 Fall as				
ENWR	1000T	Non-UVa Transfer/Test Credit	PT	3.00
Incoming Course				
BIO	102	General Biology II		
Transferred to Term 2017 Fall as				
BIOL	2200	Intro Bio w/Lab: Orgnsm & Evol	PT	4.00
Repeated:		Repeat-Include in Credit Only		
Incoming Course				
BIO	101	General Biology I		
Transferred to Term 2017 Fall as				
BIOL	2100	IntroBio w/Lab:Cell & Genetics	PT	4.00
Repeated:		Repeat-Include in Credit Only		
Transfer Credit Total:				32.00

Transfer Credit from London Schl of Econ & Pol Sci
Applied Toward Arts & Sciences Undergraduate Program

Incoming Course				
IR	130	Pol Theory & Intnt'l Politics		
Transferred to Term 2019 Summer as				
PPL	3000T	Non-UVa Transfer/Test Credit	TM	3.00
Transfer Credit Total:				3.00

Beginning of Undergraduate Record

2017 Fall

School:		College & Graduate Arts & Sci				
Major:		Arts & Sciences Undeclared				
COLA	1500	College Advising Seminars			A	1.0
Course Topic:		Knights Ladies in Middle Ages				
CS	1010	Intro to Information Tech			A+	3.0
ENGL	3810	Hist of Lit in English I			A+	3.0
ENLT	2511	Masterpieces of English Lit			A	3.0
Course Topic:		Putting Austen in her Place				
RELC	2050	Rise of Christianity			A+	3.0
RUSS	1010	First-Year Russian I			A+	4.0
Curr Credits		17.0	Grd Pts	68.000	GPA	4.000
Cuml Credits		17.0	Grd Pts	68.000	GPA	4.000
Honor:		Dean's List				

2018 Spring

School:		College & Graduate Arts & Sci				
Major:		Arts & Sciences Undeclared				
ENCW	2560	Intro Fiction Writing - Themed			A	3.0
Course Topic:		Unearthing Fiction				
ENGL	3820	History of Lit in English II			A	3.0
PHIL	2660	Philosophy of Religion			A	3.0
RUSS	1020	First-Year Russian			A	4.0
USEM	1580	University Seminar			A+	2.0
Course Topic:		Les Misérables Today				
Curr Credits		15.0	Grd Pts	60.000	GPA	4.000
Cuml Credits		32.0	Grd Pts	128.000	GPA	4.000
Honor:		Dean's List				

2018 Fall

School:	College & Graduate Arts & Sci
Major:	Arts & Sciences Undeclared

Katherine Louise Viti

06/02/2021

ENCW	3610	Intermediate Fiction Writing	A		3.0
PLAP	3400	American Political Economy	A		3.0
PLPT	3020	Modern Political Thought	A-		3.0
RUSS	2010	Second-Year Russian I	A		4.0
RUTR	3350	19th-Cent Russian Literature	A		3.0
Curr Credits		16.0 Grd Pts 63.100	GPA		3.944
Cuml Credits		48.0 Grd Pts 191.100	GPA		3.981
Honor:		Dean's List			

2019 Spring

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Major:		Slavic Languages and Literatures			
Minor:		English			
COMM	3410	Commercial Law I	A		3.0
ENAM	3240	Faulkner	A		3.0
ENRN	3220	Shakespeare Tragedies Romances	A		3.0
PLCP	3110	The Politics of Western Europe	A-		3.0
RUSS	2020	Second-Year Russian	A		4.0
Curr Credits		16.0 Grd Pts 63.100	GPA		3.944
Cuml Credits		64.0 Grd Pts 254.200	GPA		3.972
Honor:		Dean's List			

2019 Summer

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Major:		Slavic Languages and Literatures			
Minor:		English			
PLIR	3620	Politics of the EU	A		3.0
ZFOR	3503	International Study	N		0.0
Course Topic:		Study in England, Oxford			
ZFOR	3506	International Study	N		0.0
Course Topic:		Education Abroad Program			
Curr Credits		3.0 Grd Pts 12.000	GPA		4.000
Cuml Credits		67.0 Grd Pts 266.200	GPA		3.973

2019 Fall

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Major:		Slavic Languages and Literatures			
Minor:		English			
ECON	2010	Principles of Econ: Microecon	A		3.0
HIST	5130	Global Legal History	A		3.0
PPL	2010	Morality, Law and the State	A		3.0
RUSS	3010	Third-Year Russian I	A		3.0
RUTR	2740	Tolstoy in Translation	A		3.0
Curr Credits		15.0 Grd Pts 60.000	GPA		4.000
Cuml Credits		82.0 Grd Pts 326.200	GPA		3.978
Honor:		Intermediate Honors Dean's List			

2020 Spring

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Major:		Slavic Languages and Literatures			
Minor:		English			
COMM	3420	Commercial Law II	A		3.0
PHIL	2780	Ancient Political Thought	A		3.0
PLPT	4500	Special Topics	A		3.0
Course Topic:		Conservative Political Thought			
RUSS	3020	Third-Year Russian	A		3.0
RUTR	3340	Books Behind Bars	A		4.0
Curr Credits		16.0 Grd Pts 64.000	GPA		4.000
Cuml Credits		98.0 Grd Pts 390.200	GPA		3.982

2020 Fall

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Major:		Slavic Languages and Literatures			
Minor:		English			
ENGL	4580	Seminar in Literary Criticism	A+		3.0
Course Topic:		Feminist Theory			
PPL	4005	Thesis Preparation	CR		1.0
RELG	3485	Moral Leadership	A		3.0
RUSS	4010	Fourth-Year Russian I	A		3.0
SOC	2230	Criminology	A		3.0
Curr Credits		13.0 Grd Pts 48.000	GPA		4.000
Cuml Credits		111.0 Grd Pts 438.200	GPA		3.984
Honor:		Raven Society			

2021 Spring

School:		College & Graduate Arts & Sci			
Major:		Interdisciplinary - Political Philosophy, Policy, and Law			
Option:		Distinguished Major			
Major:		Slavic Languages and Literatures			
Minor:		English			
HIUS	3753	History of Modern American Law	CR		3.0
PPL	4010	Research Seminar	A+		3.0
PPL	4500	Special Topics in PPL	CR		1.0
Course Topic:		Life After PPL			
RUSS	4020	Fourth-Year Russian	A		3.0
RUTR	3360	20th Century Russian Lit	CR		3.0
Curr Credits		13.0 Grd Pts 24.000	GPA		4.000
Cuml Credits		124.0 Grd Pts 462.200	GPA		3.984

End of Undergraduate Record

James Sonne
Professor of Law
Director, Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-1422
jsonne@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend for a clerkship with you one of my standout clinic students from the spring 2023 quarter, Katherine Viti. Katherine is bright and curious, an excellent researcher and writer, and a team player who takes ownership to ensure first-rate work. She is also thoughtful and engaging, with a heart for the vulnerable and a fun sense of humor. Katherine would make a great law clerk.

I direct Stanford's Religious Liberty Clinic. Like any law school clinic, we teach students through representation of real clients in live disputes. But Stanford is unique in that our students enroll in clinic on a full-time basis; in other words, it is the only class a participating student takes in a given academic quarter. As for subject matter, we find that religious liberty offers unique opportunities that enable students to help clients in need while expanding their skills in a diverse and deeply human area—no matter their own political or ideological perspective.

Katherine was a full-time student in our clinic during the spring 2023 quarter. In clinic, Katherine was assigned several projects. The most demanding was an appellate reply brief involving the right of an inmate to access group religious practices at his prison. The case involves complex and delicate questions of constitutional law and procedure, and Katherine tackled the most thorny of these. Katherine mastered the (rather complicated) record, and researched and wrote the core sections of the brief to great effect. She also worked extremely hard, and was the reliable leader of the team to make sure everything was done right and well.

Katherine's other core project was an advocacy matter for a Jewish family navigating a religious accommodation request for their children at a local school. Katherine's work once again included excellent research and written advocacy, as well as thoughtful and comprehensive client counseling—with a keen eye to serving the client's goals within the range of options. With Katherine's foundational work, we are optimistic about our chances moving forward.

In seminar and clinic rounds sessions, Katherine also consistently demonstrated intellectual curiosity, academic and professional excellence, and a can-do attitude. She was an active and reflective participant, who enjoyed the respect of her peers. Katherine was particularly strong in conversations across difference, where she displayed the warmth and respectful dialogue we seek to foster in our clinic. Katherine was also previously enrolled in my first-year reading group on religion and the profession of law. She was a standout in that class as well.

I hope you have the chance to interview Katherine. Please let me know if you have questions or need more information. Thank you.

Sincerely,

/s/ James Sonne

Diego A. Zambrano
Assistant Professor of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-721-7681
dzambrano@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with the greatest enthusiasm that I write to recommend Katherine Viti for a clerkship in your chambers. Katherine has been a fabulous student at Stanford Law School, displaying exceptional research and writing skills, independent thinking, and *ultra-competence*. I want to hammer this aspect of Katherine's legal package again and again: she is simply extremely on top of her work, carrying a full load of classes, serving as a teaching assistant, and as an editor of the *Stanford Law Review*. And she excels at all of these activities. Again, she exemplifies ultra-competence and is one of those students who can seemingly get everything done much quicker than her classmates because she is an incredibly hard worker. As her transcript shows, she has a solid record of several honors grades, including in Constitutional Law and my class of Civil Procedure. Even more, Katherine is heavily involved in activities related to international law. This is a terrific package. And it comes from a person with am interesting background in rural Virginia. I can attest to Katherine's accomplishments because I've personally seen her intelligence, determination, grit, and ability across a range of areas, including in her exam, class participation, and as a Teaching Assistant. I am convinced that Katherine would be a brilliant clerk.

Let me say something about Katherine's contributions as an *ultra-competent* Teaching Assistant. Last fall, I began planning the latest iteration of a comparative constitutional seminar on Global Judicial Reforms—a comparative survey of the most recent successful wave of judicial reforms around the world. As soon as I decided that, I knew Katherine would be at the top of my list for TAs. I felt that way not only because of her exceptional performance in my Civ Pro class, but also because she was one of the most thoughtful, professional, and committed students. Moreover, she had been the *best student* in the prior iteration of the policy lab, producing a magisterial research project on judicial reforms in Ecuador. She went way beyond what other students did, conducting a series of interviews of Ecuadorian legal actors, and writing a superb research paper.

As a TA, Katherine was simply impressive—always on top of assignments, available for students, deeply engaged with the material, and just brilliant. For example, even before the class started, I wanted to do a literature review and survey of previous works on the vetting of judges around the world. What, exactly, do countries do to verify competence and integrity of judicial candidates? To do so, I asked Katherine to compile anything she could find. Katherine's work product was excellent, heavily researched, clearly written, and raised questions that had not occurred to me. Katherine told me she loved digging into this material. She explored several databases in-depth and illuminated the field in ways I had not considered. Then, throughout our Policy Practicum, Katherine was extremely competent and well-liked by the students. She became the perfect TA in every way, preparing classes, inviting guest speakers, supervising the work of other students, and being an all-around aid to my teaching. I could not have taught that class without her.

Let me say another word about Katherine's *ultra-competence*—she managed to organize a series of speaking engagements by foreign judges, help me plan a trip to Colombia with our seminar, and serve as articles editor at the *Stanford Law Review*. She is simply one of those students who can get anything done in time. Of course, my first impression of Katherine's *ultra-competence* came from our Civil Procedure class. As you may know, Civil Procedure provides instruction in some of the most important and foundational concepts in our litigation system. I therefore have a unique view of Katherine's aptitude for litigation and the way our judiciary operates. I can tell you without hesitation that she is a superb law student. Katherine's exam was outstanding, placing at the top of the class, easily winning her an Honors grade and was a contender for the best exam in the class. Katherine was one of the only students to successfully spot all important issues and untangle the complex web of facts and arguments that I presented in the exam. Her exam exemplified Katherine's clear and analytical writing.

Setting aside her obvious high level of competence, let me also say something about Katherine's professionalism. She is easy to talk to, professional and respectful, but also interes*ting* and interes*ted* in the law. She is collegial and a wonderful person to have in a classroom. Always on time and always respectful. She is an incredibly hard worker. A quick look at her CV exhibits a dozen activities that she has been involved in over the last two years.

Katherine's personality and professional package is rounded out by a deep devotion to international legal issues. Katherine spent her first summer of law school in Rwanda, designing a new regime for the use of legal technology in Rwandan courts. She spent her Spring Break with our class in Colombia, interviewing dozens of judges. And that's just the beginning. Katherine's CV exhibits this: major in Russian, research assistant for Professor Erik Jensen on Rwandan legal issues, and several classes on international law. When I run into Katherine in the halls, we can debate about international law in the context of the Russia-Ukraine war, or we can move on to discuss recent separation of powers clashes in South America.

I think Katherine has built such a love for international issues because her background is so deeply American. She's fundamentally a Virginian, hailing from a rural area in the state. She attended UVa for her undergraduate studies, where she maintained a strong connection to her family in Virginia. I've spoken with her about her weak academic performance in the Spring Quarter of her 1L year—she told me it was due to her grandfather's death in a car accident. I think that quarter was not representative of the excellent work I have come to expect from her. Katherine's profoundly American/Virginian background instilled in her the foundational value of *hard work*. I've seen her as a TA and student and you can trust me when I say this: she is fully devoted to anything she works on.

Let me say a final word about Katherine: she is fundamentally pragmatic and non-ideological. Because she grew up in a conservative family but came to embrace different values, she has maintained an open mind across political divisions. I have found that she is very reasonable, open to disagreement, fundamentally level-headed, and committed to hearing from people she disagrees with. Yes, she is smart. But, more importantly, she is a *smart listener*.

The bottom line is this: Katherine is a highly talented student; deeply passionate about international legal work; professional and intelligent; as well as the hardest worker you will find. I am confident she would be a first-rate clerk in your chambers. Without hesitation, I give her my strongest recommendation.

Sincerely,

/s/ Diego A. Zambrano

Diego Zambrano - dzambrano@law.stanford.edu

StanfordLawSchool

JENNY S. MARTINEZ
Richard E. Lang Professor of Law and Dean

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-4455
Fax 650 723-4669
jmartinez@law.stanford.edu

Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes "Pass" (P) as the default grade for typically strong work in which the student has mastered the subject, and "Honors" (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

H	Honors	Exceptional work, significantly superior to the average performance at the school.
P	Pass	Representing successful mastery of the course material.
MP	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
MPH	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
R	Restricted Credit	Representing work that is unsatisfactory.
F	Fail	Representing work that does not show minimally adequate mastery of the material.
L	Pass	Student has passed the class. Exact grade yet to be reported.
I	Incomplete	
N	Continuing Course	
[blank]		Grading deadline has not yet passed. Grade has yet to be reported.
GNR	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

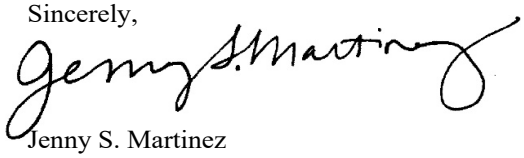
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,



Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

Elizabeth Reese
Assistant Professor of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-4185
ereese@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation that you hire Katherine Viti, Stanford Law JD24, for a clerkship position in your chambers. Katherine is smart, dedicated, and incredibly focused. She will make a wonderful clerk.

I first met Katherine when she enrolled in my Federal Indian Law class at Stanford Law School. Right away, it was clear that she was incredibly engaged in the course. She had fantastic comments in class and was consistently well-prepared. She stopped by my office hours a few times to discuss the material. It was clear to me that Katherine's brain is always going. She is very analytical and passionate at the same time. She brings an energizing kind of focus to the way she asks questions about the material. It's an infectious energy and love for the law and all the reasons that it matters. I have no doubt that that kind of energy, focus, and enthusiasm will be an asset in any clerkship chambers.

Beyond her work in my class, I have met with Katherine to talk about both her writing projects and my own. She decided to write a research paper for her U.S. legal history course on the intersection of indigenous law issues and international borders. She reached out to me to talk about the project, and our conversation was fantastic. Her questions were thoughtful, and she approached the topic with a noteworthy amount of both humility and infectious curiosity. It was during this conversation that I learned that Katherine is interested in legal academia. She dreams of one day being a civil procedure professor. This seems to fit perfectly. She has the kind of excitement combined with an analytical disposition that makes some of the best civil procedure professors so good at their job. It's that infectious energy for how a system works, why it works, and the intricacies as well as rationales behind such systems.

I have also gotten the opportunity to work with Katherine on some of my own writing. She was assigned as the primary editor of a piece of mine with the *Stanford Law Review*. It was a fortuitous pairing, since Katherine is not only a joy to work with, but it also allows me to speak to her ability to provide thoughtful and careful feedback on writing and legal ideas. She has worked incredibly hard on the piece, and I was so impressed by the comments she provided. I agreed with most of them, which is truly a compliment! She also expressed her critical feedback in such a careful but clear way—exactly the kind of thing that will make her excellent at writing bench memos.

I strongly encourage you to hire Katherine. She will be an asset to your chambers—an injection of excitement and focus. I trusted her to edit my writing, and she has continually impressed me with not only her writing edits but also her substantive feedback. If you decide to trust her with your writing, I have no doubts you will feel the same.

Sincerely,

/s/ Elizabeth Reese

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

WRITING SAMPLE

I prepared this document as part of my work clerking for Chief Justice Ntezilyayo of the Supreme Court of Rwanda. The research assignment was to investigate international best practices for virtual hearings, particularly in the criminal context. After drafting this memo summarizing my research and the scope of possible issues to consider, I worked on a committee with the Director of IT for the Rwandan Judiciary and a lower court judge to develop these recommendations into text to be inserted into the Rwandan civil code governing the operation of the judiciary. Several months after my time at the Court ended, this document was issued summarizing the current state of technology use in the Rwandan judiciary for the public. I realize that this memo is a very non-traditional writing sample, so I hope the context provided here is helpful in evaluating it as a document. I prepared this document entirely on my own, and I am submitting it with the permission of Chief Justice Ntezilyayo.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

Katherine Viti
Research Memo: Main Challenges Pertaining to Due Process and Remote Court Hearings for Criminal Matters in Rwanda
Prepared for Chief Justice Ntezilyayo
June 10, 2022

Introduction:

Many countries adopted some virtual hearings as part of their emergency response to the COVID-19 Pandemic, beginning in 2020. Initially, these measures were only stopgaps, but there are advantages to remote hearings that make them attractive for continued use. These advantages include:

- Increased ease, efficiency, and effectiveness in dealing with transnational crime through increased international cooperation
- Shielding sensitive victims and witnesses, both for their personal security and to prevent their re-traumatization
- Transparency and increased public access to the justice system (if proceedings are recorded or available in real time to the public)
- Increased speed and efficiency in access to justice, particularly in contexts where speed is critical (such as domestic violence and child welfare)
- Overcoming geographical access to justice barriers within a nation (so witnesses don't have to engage in difficult/hard/expensive travel to access the court system)

Rwanda has long recognized the advantages of remote hearings and has been using them in some form since around 2010. However, particularly in the criminal context, where I focus here, there are serious concerns with conducting remote hearings. These concerns include:

- Ensuring the defendant's due process rights are upheld, particularly regarding adequate and confidential access to counsel before, during, and after proceedings
- Concerns about witnesses, victims, or defendants testifying from unsafe or coercive environments such that it alters their testimony (such as when testifying from prison, in a public place, or in a home shared with an abuser)
- Technology access issues for testifying individuals, including both the relevant devices and internet access
- Difficulty presenting complex evidence over technology so as to allow all involved to view it properly (such as exhibits, large documents, physical evidence, etc)
- Difficulty ensuring security and maintaining order in the proceeding
- Difficulty accessing digital proceedings for people who are illiterate, disabled, or do not speak the language the proceeding is in

Rwanda can mitigate some of these concerns by adopting a nationwide policy regarding the use of remote hearings in criminal matters. To be clear, Rwanda has already implemented some of these recommendations, but I am including them all here to be as comprehensive as possible. This policy should include the answers to some key questions below about the scope and scale at which the use of remote procedures is desirable, as well some best practices for the

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

actual conduct of the hearings themselves. These questions and best practices should include the following:

- What kinds of hearings should be done virtually? What kinds should remain only in-person?
- Should all hearings of this type be virtual, or should parties have to request it?
    - Should the accused have to consent in order for the hearing to be virtual? What if the witness requests a virtual hearing?
- Should hearings be completely virtual, or only partially virtual, where one party appears virtually and the rest appear in person?
- Best practices regarding technology: the judiciary should create a protocol addressing:
    - How to test the technology in advance of the hearing
    - What to do if the technology fails during the hearing, including common troubleshooting fixes, the role of any IT staff that might be available, or when to reschedule the hearing
    - How the technology will keep the hearing secure, including issues of unauthorized recording and of public access to the relevant kinds of hearings
    - How to use technology to present evidence
    - How the technology will interact with the pre-existing e-court system
    - When audio vs. video technology is appropriate
- Best practices for judges regarding:
    - How to use the technology
    - How to maintain order/sanction bad behavior in a digital courtroom
- Best practices for prisons regarding:
    - How to ensure prisoners have adequate, private interaction with counsel before, during, and after their hearing
    - How to minimize the coercive nature of the background prison environment during the hearing and provide some privacy
    - Technology maintenance and access
- Handbook for prosecutors to distribute to victims/witnesses (particularly women, children, and other vulnerable parties) that clearly explains:
    - In which circumstances it is possible for them to appear remotely and how they can request to do so
    - How to log on and access the hearing
    - Where to access the technology necessary for the hearing
    - How their role in the hearing will work
- Clear advertisement to the public regarding whether hearings are accessible and how to access them

This analysis of the core questions and best practices was developed by looking at similar work done by jurisdictions around the world, including in various US states, the EU, Australia, South Africa, Nigeria, and countries of the Middle East and North Africa. While Rwanda may face more logistical and resource-based challenges than some of the nations whose example has been considered, it is important to note that no jurisdiction I read about has resolved the resource issues called up by virtual hearings, including particularly those surrounding citizens' access to

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

the technology necessary to participate. In fact, based on my conversations with Fred Gashemeza,[1] Rwanda is ahead of the game in implementing many of these solutions, particularly in regard to the actual technology infrastructure.

To deal with the resource challenges, I recommend maintaining a narrower scope of remote hearings, and scaling up as access to technology improves, so as to be able to focus on building a procedure that works well and respects the rights and roles of every stakeholder involved. The citizen technology access issue is one that many branches of government and civil society are ultimately invested in resolving and might be an opportunity for the judiciary to partner with other parts of society or to create international partnerships, whereas the due process and justice issues are essentially legal and can only be dealt with by the judiciary. Therefore, the judiciary should focus its resources on the issues that are uniquely within its purview to resolve, and search for partners to resolve issues that affect other aspects of society.

This report functions by progressing systematically through the series of questions and issues to consider in setting up a system for virtual criminal hearings. In creating this progression, I relied heavily on guidance provided by the UN.[2] As I address each issue in turn, I will explain how a different jurisdiction has handled that question, how Rwanda has handled or is handling it, and make recommendations for the future.

Developing Recommended Best Practices for Rwanda:

I. Ensure Procedures Comply with In-Person Due Process Requirements from Rwanda's Overall Governing Law

In considering best practices to adopt for Rwanda, UN Peacekeeping documentation[3] recommends that countries ensure that their constitutions and procedural laws allow for virtual hearings (or at least do not mandate in-person appearances or contain any other requirements that can only be fulfilled physically). In some countries in the Middle East and North Africa (MENA), nations are also trying to take into account their obligations under the International Covenant on Civil and Political Rights (ICCPR).[4] The primary obligations at issue under the ICCPR are those under Article 9 (the right to be free from arbitrary arrest and detention) and Article 14 (the right to a fair trial).[5] In Egypt, like in Rwanda, remote hearings are often used in the pretrial detention phase. Advocates in Egypt raised concerns regarding "depriv[ing] detainees of the regular connectivity to the outside world" that goes along with attending hearings in person, and reforms to Egypt's process continue.[6] Morocco and Lebanon have both had major technology issues in the implementation of remote hearings; in Lebanon sometimes the

[1] Mr. Gashemeza is the Director of IT for the Judiciary of Rwanda.
[2] Justice and Corrections Service, U.N. Office of Rule of Law and Security Institutions, Department of Peace of Operations, Remote Hearing Toolkit (2020), https://peacekeeping.un.org/sites/default/files/unitar-orolsi_remote_hearing_toolkit_2020.pdf.
[3] *Id* at 9.
[4] Mai El-Sadany, Madeleine Hall, & Yasmin Omar, *Remote Hearings, Detention, and the Pandemic in MENA*, TAHRIR INSTITUTE FOR MIDDLE EAST POLICY (Apr. 23, 2021), https://timep.org/commentary/remote-hearings-detention-and-the-pandemic-in-the-mena-region/.
[5] *Id.*
[6] *Id.*

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

connections are so bad that the judge calls in on a mobile phone.[7] These tech issues create real due process violations that threaten the rights protected under the ICCPR.

The European Union is skeptical of the practice of remote hearings entirely because of these due process concerns. The EU has significant additional human rights protections built into it, including rigorous protections for the accused. Concerns raised by European scholars about remote hearings include the problems experienced by the MENA countries, as well as additional concerns about the way in which in-person hearings and testimony better enable hearings to serve their fact-finding purpose. Body language and other behavioral cues that provide important information during hearings are much harder, if not impossible, to judge from a remote hearing, and this lack of physical information is of great concern to Europeans.[8] Additionally, the physical courtroom projects "a certain spatial materiality of justice" that is important to defendants' feeling of having their day in court, as well as to the proceedings themselves.[9] Furthermore, the EU is very concerned about how to measure judicial outcomes, and there is concern about developing metrics to assess the success of remote hearings.[10]

In Rwanda, these concerns are still relevant, but more attention should be paid to the obligations Rwanda owes its criminal defendants under its own internal criminal procedure code. Rwanda has been conducting some remote hearings for many years now, but considering the Law Relating to Criminal Procedure's requirements may allow bounds to be put on what kinds of hearings can and cannot be conducted online.[11] Certain aspects of criminal investigations seem to require an in-person component to the proceedings, such as the requirement in Articles 18, 51, and 72[12] for witnesses to fingerprint their statements after giving them, but these requirements are outside the scope of consideration for actual hearings. However, they indicate that there might be some difficulty in making the process entirely remote. Regarding requirements for hearings that may require a judge or the court to be in person in some capacity, Article 76 requires a judge at a pretrial detention hearing "to consider the living conditions and the health of the accused person."[13] Rwanda has been using remote hearings for pretrial detention for a long time, and they may be the most useful context for remote hearings, by actually accelerating the process and therefore protecting the health and wellbeing of the accused person.

Remote hearings must be sure to comply with Article 125, which requires the preliminary hearing to be in camera (private).[14] This requirement presents its own challenges online, mostly regarding privacy. Mr. Gashemeza told me that Rwanda does its best to ensure privacy by distributing links to hearings on an as-needed basis, but security remains a challenge. Article 125 does however explicitly allow audio-visual testimony if a person cannot be present at the hearing, and Article 130 explicitly allows for electronic hearings, so moving in this direction is legally sanctioned.[15] Another potential security risk comes from the provisions of Article 136,

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[7] *Id.*
[8] Kresimir Kamber, *The Right to a Fair Online Hearing*, 22 HUM. RTS. L. REV. 1, 9 (2022).
[9] *Id*. at 4.
[10] *Id.* at 10. For an example of the EU's attempt to measure the success of their judicial digitization efforts, see 2022 EU Justice Scoreboard, EUROPEAN COMMISSION, 31-36, https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf.
[11] Law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure (Rwanda).
[12] *Id*.
[13] *Id*.
[14] *Id.*
[15] *Id.*

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

which require anyone wishing to create audio or visual recordings of hearings to request permission in writing at least 48 hours in advance.[16] As the technology available to log into the hearings expands, the judiciary will need to think about how to prevent people from illegally recording hearings from the other end in order to comply with the Law on Criminal Procedure. Additionally, Article 176 nearly always requires an "in person" appearance in order to have the privilege of appeal in cases where the judgment at first instance was passed down in absentia.[17] It is unclear whether remote hearings would qualify as "in person" to satisfy this requirement, and furthermore, policies would need to be created to distinguish people truly in absentia from those having technology issues.

Overall, the use of remote hearings is in compliance with Rwandan Criminal Procedure, though the Code highlights areas over which procedure should be cautious to respect the rights of defendants.

II. Choosing the Kind of Hearings to Hold Remotely

Rwanda should also consider what kind of hearings it makes sense to hold remotely. Rwandan practice already matches US practice in holding hearings with prisoners, including pre-trial detention hearings, remotely. There might be other contexts in which the urgency of the facts makes remote hearings a good choice, such as in domestic violence and child protection cases.[18] The UN recommends the use of remote hearings in transnational criminal contexts, because of the logistical and jurisdictional difficulty of these cases, and has published a long handbook about how best to conduct these hearings that might be of interest.[19] Rwanda used some similar remote procedures in the International Criminal Tribunal for Rwanda (ICTR), mostly to allow witnesses who could not or did not want to appear in person to testify, as well as for witness protection and to avoid logistical problems associated with transporting certain detainees.[20] Additionally, there are contexts where remote hearings do not make sense, including those where a relevant party has a disability, is illiterate, or is otherwise prohibited from making full use of the technology. Rwanda should also make practical decisions about when to do remote hearings based on which levels of courts have the technology infrastructure to conduct remote hearings. In issuing guidance about which hearings should be held remotely, Rwanda should balance which proceedings will be easiest to run remotely, versus which kinds of proceedings will be best done in the interest of justice remotely.

The European Court of Human Rights has instituted a "counterbalancing factors" analysis in the EU, which weighs the increased difficulty for the defendant of making their case and exercising their rights in the virtual environment against the scale of protections for defendants enacted in that environment to determine what kinds of proceedings can be done remotely without violating the due process rights of criminal defendants.[21] Because of the importance of the criminal defendant himself making his case at trial, the suggestion behind this test is that the

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[16] *Id.*
[17] *Id.*
[18] *What Do We Know About Virtual Court Hearings?*, CASEY FAMILY LAW (July 14, 2020), https://www.casey.org/virtual-permanency-courts/.
[19] Manual on Videoconferencing: Legal and Practical Use in Criminal Cases, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2017), https://www.unodc.org/documents/organized-crime/GPTOC/GPTOC2/MANUAL_VIDEOCONFERENCING.pdf.
[20] *Id*. at 131.
[21] Kamber, *supra* note 8, at 12.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

physical presence of accused is far more important at trial level than appellate level, thus making appellate remote hearings more just under the scheme of rights in the European Union.[22] For example, in *Marcello Viola v. Italy*, the European Court of Human Rights ruled that the defendant's rights were adequately protected when he appeared at his appeal via video link from prison.[23] The defendant was connected to the mafia, and there were legitimate safety concerns that caused the Italian authorities to set up his appeal in this way, as well as sufficient protections for his rights built into the process.[24] When the ECHR has ruled that video hearings violate a defendant's due process rights, the cases have largely been against the Russian government, and turned on the defendant's complete lack of access to an attorney.[25]

The judiciary should also consider whether it makes sense to require the accused's consent to host certain hearings remotely, or whether remote hearings can be mandated. International practice on this is hugely mixed, and Rwanda would not have to answer one way or another. In South Africa, for example, online hearings require the accused's consent and the trial court's order, but witnesses can petition for it based on their safety concerns.[26] Rwanda could adopt a similar strategy, but also follow *Marcello Viola* and make remote hearings mandatory for prisoners at a certain security status.

III. Optimizing Rwanda's Current Procedures

Rwanda's Current and Future Technology

Rwanda has a significant amount of the technology infrastructure necessary for remote hearings already in place and has since well before the pandemic, in contrast with most of the world's jurisdictions. This infrastructure includes the IECMS system[27] to manage cases throughout different parts of the justice sector, as well as the various hardware VCF systems for videoconferencing that have been in use in certain designated courts and prisons for years. It also includes the ongoing efforts to expand broadband and device access throughout the country. Rwanda further relied on Skype during the pandemic to increase its digital capacity in an emergent capacity.

Mr. Gashemeza indicated to me that expanding the availability to VCF through a mobile app connected to the IECMS is a high priority, with a goal to make such access available to everyone who is connected to that platform—parties, advocates, all judges nationwide, investigative bodies, and all other concerned parties. This solution would be more resource-efficient than

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[22] *Id.* at 16. The rights of the accused in the EU are protected by Article 6 of the European Convention on Human Rights and are extensive.
[23] *Id.* at 17-18 (citing *Marcello Viola v. Italy*, App. No. 77633/16 (June 13, 2019), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-194036%22]}. Note that the full decision is only available in French.).
[24] *Id.*
[25] *Id.* at 19-20.
[26] Fawzia Cassim, *The Accused's Right to Present: A Key to Meaningful Participation in the Criminal Process*, 38 COMPAR. & INT'L L. J. S. AFR. 285, 288 (July 2005).
[27] The Integrated Electronic Case Management System (IECMS) is used by the Rwandan Judiciary to manage their caseload. It was specifically designed by the Judiciary for this purpose. All Rwandan cases are filed via this system, and all documents are submitted electronically. It has specific portals for judges, lawyers, and parties. To read more about IECMS, see *Rwanda's Justice Sector Integrated Electronic Case Management System (IECMS)*, SYNERGY, https://www.synisys.com/featured-projects/rwandas-justice-sector-integrated-electronic-case-management-system-iecms/. For a demonstration of how ICEMS works, see the Rwandan Judiciary's YouTube tutorial for its use at https://www.youtube.com/watch?v=zmNTeAMy1OI.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

attempting to install VCF technology in all 190+ courtrooms across the country and could also take advantage of larger government and civil society initiatives to increase broadband and technology access throughout the country.

Use and Problems of Technology for Remote Hearings in Other Jurisdictions

Rwanda's current technology infrastructure for remote hearings is fairly good by international standards, as many countries did not have any digital judicial mechanisms until the COVID-19 pandemic. For example, Bangladesh implemented a very basic electronic case filing system as part of their pandemic response, while Rwanda had implemented the IECMS (which won international design awards) before the pandemic.[28] The other end of the spectrum is China, which has hugely digitized its judiciary since 2017 by introducing 24/7 entirely virtual courts in several cities that use virtual judges to make rulings on certain kinds of cases dealing with internet rights.[29] While this effort has been praised for its increased transparency, it has also been criticized as part of its authoritarian control over its population.[30] Other jurisdictions that pivoted to remote hearings abruptly include Nigeria, the United Kingdom, Australia, the United Arab Emirates and South Africa.[31] One study focused on Australia indicated that the primary evolution during the pandemic has been from AVL hearings (where one participant, generally a vulnerable witness or a prisoner, calls into a larger in-person hearing via an audio-visual link (AVL)) to fully remote hearings, where everyone is calling in.[32] Australia even engaged in complex litigation via fully remote hearings, whereas jurisdictions like South Africa, despite its judicial orders to pivot to remote hearings, struggled to implement them in practice.[33] Australia used nearly every known commercial videoconferencing platform, while other countries could not implement any. Some jurisdictions were also criticized for the scope of the decisions taken online, as Nigeria was when a court sentenced someone to death via a Zoom proceeding.[34] The United Arab Emirates is pivoting to run 80% of their litigation sessions remotely permanently after the pandemic,[35] and has used MeetMe and WebEx as its primary vehicles for remote hearings in both the criminal and civil contexts.[36]

While the resources available to nations matters in their ability to digitalize at their preferred speed, as one report about the digitalization of the judiciaries, primarily the e-case management

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[28] Aiman R. Khan, *The Law on E-judiciary Might Change Bangladesh Courts Forever*, BUS. STANDARD (May 21, 2020, 6:22 PM), https://www.tbsnews.net/thoughts/law-e-judiciary-might-change-bangladesh-courts-forever-84148.
[29] Bryan Lynn, *Robot Justice: The Rise of China's 'Internet Courts'*, VOA: LEARNING ENGLISH (Dec. 11, 2019), https://learningenglish.voanews.com/a/robot-justice-the-rise-of-china-s-internet-courts-/5201677.html.
[30] Jason Tashea, *How the U.S. Can Compete with China on Digital Justice Technology*, BROOKINGS: TECH STREAM (Oct. 25, 2021), https://www.brookings.edu/techstream/how-the-u-s-can-compete-with-china-on-digital-justice-technology/.
[31] M.M. Maya, President of the Supreme Court of Appeal, *Practice Direction: Supreme Court of Appeal Video or Audio Hearings During Covid-19 Pandemic*, SUPREME COURT OF APPEAL, SOUTH AFRICA (Apr. 29, 2020), https://www.supremecourtofappeal.org.za/index.php/2-uncategorised/46-practice-directions.
[32] Michael Legg & Anthony Song, *The Courts, the Remote Hearing, and the Pandemic: From Action to Reflection,* 44 UNIV. NEW S. WALES L.J., 126, 130-35 (2021).
[33] *Id.* at 144.
[34] *Coronavirus: Nigeria's Death Penalty by Zoom 'Inhumane'*, BBC (May 6, 2020), https://www.bbc.com/news/world-africa-52560918.
[35] Virtual Litigation, UNITED ARAB EMIRATES (July 7, 2021), https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/virtual-litigation.
[36] Remote Hearings, ABU DHABI JUDICIAL DEPARTMENT, https://www.adjd.gov.ae/en/Pages/RemoteCourtHearings.aspx.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

systems of the Baltic and Nordic states discusses, it is not the sole contributing factor.[37] For example, U.S. jurisdictions, despite the resources available in the US, have digitized case management systems at hugely varying levels, including 26 jurisdictions that as of 2015 could not identify how many cases had been filed and disposed of in a year in their jurisdictions.[38] The US did hold certain kinds of hearings remotely before the pandemic, mostly pretrial detention and immigration hearings.[39] Nevertheless, many organizations and jurisdictions issued emergency guidance about how to pivot courts to providing some services virtually, including the Joint Technology Committee of the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts;[40] the state of California;[41] and the state of Michigan.[42] US jurisdictions have overwhelmingly relied on the videoconferencing technology Zoom and have had issues regarding litigants' technology access that has resulted in several proceedings having to be re-tried.[43] The US faces significant technology access issues as well, particularly among low-income residents, who often lack broadband access and/or access to a device that allows them the full ability to participate in the hearing (i.e., they have no video, they are unable to share their screens or otherwise upload and show documentary evidence).[44] Similarly, attorneys in the US struggle to communicate with their clients when hearings are fully remote, and judges and juries struggle to assess the credibility of witnesses, as well as any relevant cognitive disabilities.[45]

Given these comparisons, Rwanda is not particularly far behind in terms of resources for remote hearings. Rwanda's legal infrastructure likely allows remote hearings to be conducted at a large scale with the proper procedures in place. In the next section, I make recommendations for how to implement those procedures.

Recommendations for Non-Hardware Changes Rwanda Can Make to Uphold Due Process Through the Technology Used and Judges' Operation of It

1. Software Changes

This survey of international procedures and difficulties in remote hearings indicates the kinds of problems Rwanda should address when considering the technology it uses to conduct remote hearings. In order to optimize its use of technology to make remote hearings as secure and effective as possible, Rwanda should ensure that between VCF, the IECMS, and any other

[37] Frederik Waage & Hanne Marie Motzfeldt, *Digitalization at the Courts*, NORDIC CO-OPERATION (May 5, 2022), https://www.norden.org/en/publication/digitalization-courts.
[38] Tashea, *supra* note 30.
[39] Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NW. L. REV. 1875, 1882 (2021).
[40] *JTC Quick Response Bulletin: Strategic Issues to Consider When Starting Virtual Hearings* (Apr. 7, 2020), https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf.
[41] California Commission on Access to Justice, *Remote Hearings and Access to Justice: During Covid-19 and Beyond*, https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf.
[42] State Court Administrative Office, *Remote Court Participation Chart*, MICHIGAN COURTS (May 11, 2020), https://drive.google.com/file/d/1q5oP82_vQOAznubgFiV-h9Jj5lUtCDlj/view.
[43] Avalon Zoppo, *Court Orders Do-Over After Tech Troubles Plague Zoom Trial*, LAW (May 9, 2022, 5:40 PM), https://www.law.com/nationallawjournal/2022/05/09/court-orders-do-over-after-tech-troubles-plague-zoom-trial/.
[44] Bannon & Keith, *supra* note 39 at 1889, 1891.
[45] *Id.* at 1883, 1885.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

technology in play, all parties involved have access to the ability to share and view documentary evidence and adequate assurance that proceedings are secure (such that no one can enter or record proceedings who is not authorized to do so). Additionally, judges should have power to control the proceedings. Necessary mechanisms include but are not limited to controls over the ability to record proceedings, the ability to control the entry and exit of participants from the meeting, and the ability to mute parties not meant to be speaking so as to maintain order within the proceeding.

2. Protection of Attorney-Client Privilege and Communication Privacy Generally

Additionally, there should be some procedure set up to allow parties who are meant to be able to communicate privately during the procedure to be able to do so. This aspect of remote hearings is critical to get right in criminal cases, because it maintains attorney-client privilege and upholds a defendant's due process right to counsel. The US has relied on text messaging between the attorney and the client or private Zoom breakout rooms for them, but the success of these procedures has been incomplete.[46] Most of the solutions for this problem so far, even those provided by the judiciary formally,[47] seem to be focused on how advocates prepare to go to trial virtually, rather than on systemic solutions to the problem of access to counsel.[48] The Rwandan Judiciary could build a procedure into its protocols for remote hearings to dictate what kind of technology should be used to facilitate this communication (for example, providing a phone to inmates where they can call their advocates while appearing remotely), or by scheduling breaks into the proceedings where advocates and clients can confer in private. This area is an example where technology might actually increase due process protections for criminal defendants, if it can be reliably used to increase their access to counsel beyond what it might have been in person. Conversely, it is also important to ensure that parties who are not supposed to communicate do not have access to each other during the hearing. For example, witnesses in domestic violence cases should be shielded from contact by their abuser, and the defendant-abuser should be prevented from using the technology to find out anything about them (such as their phone number, which was an issue in New York State family court in the United States).[49]

3. Creating Protocols to Train Judges and Prison Officials in Advance of Hearings

In addition to examining Rwandan technology to ensure it fulfills these criteria, the Judiciary should also create a protocol by which judges can be trained to use the technology, as well as be trained to check for and troubleshoot issues with other parties' use of the technology. While IT staff would be helpful, it would likely be more cost-effective to ensure all judges can do most of the IT troubleshooting necessary and reserve that expensive resource for the worst problems that

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[46] *Id.* at 1883.
[47] Sabrina Ayers Fisher, *Remote Hearing Etiquette Guide for Counsel and Clients*, OFFICE OF THE PUBLIC ADVOCATE, MARICOPA COUNTY (Arizona) (Apr. 30, 2020), https://superiorcourt.maricopa.gov/media/6787/remote-hearing-etiquette-guide-for-counsel-and-clients.pdf.
[48] *See e.g.*, *Virtual Court Hearings: Practical Tips, Tricks, and Takeaways for Lawyers Everywhere*, HOWARD KENNEDY (U.K. law firm), https://afaa.ngo/resources/News/Virtual%20Court%20Hearings_%20Practical%20tips,%20tricks%20and%20takeaways%20for%20lawyers%20everywhere.pdf;
[49] *Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse*, NEW YORK CITY BAR (Apr. 9, 2021), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases.

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

arise. The protocol should direct judges to ensure before a hearing that all parties have reliable internet access and access to devices with the necessary capability to participate in the hearing. Additionally, judges should make sure that all parties have the services they need to fully participate, including language interpreters and adequate support for victims (particularly children and victims of domestic violence).

Judges should also ensure, to the best of their ability, that testifying individuals are in safe locations where they will not be coerced and will be able to speak freely. The courtroom provides this security by the presence of armed guards in a way that is more difficult to re-create online, where the nearby presence of friends, family members, prison guards, or the general public might make it harder for people to testify honestly and completely. This concern about family coercion is particularly acute when witnesses are minor children who might be testifying against family members. The Judiciary should decide what resources it wants or needs to devote to ensure that people have safe places to testify where they will not be coerced.

Particularly relevant here is the inherently coercive nature of testifying from a prison, the psychologically deleterious effects of which are well-documented. Separate guidelines should be issued for prisons, strictly laying out prisoners' need for as much privacy as prison security allow for during their hearings, as well as access to their attorney. Judges should ask parties about all of these factors in advance and ensure that the technology will connect before the hearing, so IT support can be brought in if necessary. In some cases, the likely coercive effects of the environment for a witness or defendant might be so much that the judge should opt to hold the hearing in person. The guidelines the judiciary creates to determine which hearings should be held remotely should address these concerns.

4. Creating Protocols for Judges' Use During Hearings

Judges should similarly have a protocol directing them on how to use the technology during the trial. This protocol should include directions about how to maintain order, show documentary evidence (if necessary), and how to ensure attorney-client privilege is guaranteed. It also should include any Rwandan law requirements about when an accused is required to be allowed to be face-to-face with the evidence against them (this is called the right of confrontation in the US and Europe). This protocol should also provide directions to judges on what to do if a participant gets disconnected from the hearing, and what to do if the problem recurs. How long of a break should the proceeding take to allow for reconnection? At what level of technological difficulty should the hearing move to audio-only? When should it simply be rescheduled? The judiciary can impose uniform guidance and pass it along to judges to enact in their virtual courtrooms to ensure a fair approach throughout courtrooms nationwide and a serious attitude throughout proceedings.

5. Creating Protocols for the Public

In addition to pre-trial guidance provided to judges, the judiciary should create pre-trial guidance for witnesses and victims, explaining how to use the technology and any secure testimony space, as well as providing them with resources for further support. In Abu Dhabi, the judicial department's website includes hearing instructions, FAQs, and a page guiding the ethics and behaviors of participants in remote hearings that Rwanda could imitate in its public

KATHERINE VITI
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

guidance.[50] This guidance also includes quick access to IT support through Whatsapp and phone. This protocol should include information about witness protection, which is well-established in Rwanda and includes both digital and physical tools for witnesses who are testifying remotely because they fear for their safety.[51]

Optimizing technology can also go beyond protecting the rights and benefits of in person proceedings. An opportunity to increase justice via technology is the ability to publicize hearings. If a hearing will be publicly viewable, either livestreamed or as a recording afterwards, this should be advertised, in conjunction with Rwandan constitutional guarantees of judicial transparency. Access to justice is increased by online hearings because more of the public can see and understand what is going on.

IV. Conclusion

As Rwanda moves to further implement remote hearings in the criminal context, the Judiciary can set guidelines for judges, prison officials, attorneys, and parties to ensure that due process rights of criminal defendants are respected within the proceedings. Additionally, Rwanda has the potential to expand the technology so as to further the scope at which remote hearings can be conducted. Still, the judiciary should think carefully about in which contexts remote hearings serve the goals of fact-finding and justice, and in what contexts remote hearings make less sense. My comparative review of remote hearing practices in jurisdictions across the world has revealed that most judiciaries are struggling with the same problems in implementation, and that no system has figured out how to best solve many of these problems.

[50] *See* Remote Court Hearings, *supra* note 36. Click on the tabs labelled "Instructions for Attending Hearings", "Ethics of Remote Hearings, and "FAQs", at https://www.adjd.gov.ae/en/Pages/RemoteCourtHearings.aspx. There are also user guides for the two meeting platforms used available at this link.

[51] For information regarding the successes and failures of Rwandan witness protection, particularly in conjunction with cases surrounding the genocide, see Donatien Nikuze, *Witness Protection in Rwandan Judicial System,* 22 INT'L J. ENG'G RSCH AND TECH. 2738 (2013).

Applicant Details

First Name	**Madeleine**
Last Name	**Voigt**
Citizenship Status	**U. S. Citizen**
Email Address	**voigtmaddie@gmail.com**
Address	**Address** Street **509 N Fremont Ave., Unit 113** City **Tampa** State/Territory **Florida** Zip **33606** Country **United States**
Contact Phone Number	**3524671366**

Applicant Education

BA/BS From	**University of South Florida**
Date of BA/BS	**December 2017**
JD/LLB From	**Stetson University College of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp**
Date of JD/LLB	**May 13, 2023**
Class Rank	**33%**
Law Review/Journal	**Yes**
Journal(s)	**Stetson Business Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Hopper, Ryan
hopperr@gtlaw.com
8133185707
Weinstein, David
weinsteind@gtlaw.com
813.318.5701
Weiner, Erica
es0725@gmail.com
917-601-9949

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Madeleine Voigt
509 N. Fremont Ave.
Unit 113
Tampa, FL 33606

March 25, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am third-year student at Stetson University College of Law and Litigation Paralegal at Greenberg Traurig writing to apply to a clerkship in your chambers for the 2024-25 term.

My resume, writing sample, and law school transcript are enclosed. Letters of recommendation from Erica J. Weiner, Esq. (917.601.9949), Ryan T. Hopper, Esq. (813.318.5707), and David B. Weinstein, Esq. (813.318.5701) will follow. Please let me know if you require additional information. Thank you for your consideration.

Respectfully,

Madeleine Voigt

Madeleine J. Voigt

MADELEINE J. VOIGT

(352) 467-1366 – mvoigt@law.stetson.edu
Tampa, Florida 33606

EDUCATION

STETSON UNIVERSITY COLLEGE OF LAW, Gulfport, FL
J.D. Candidate, May 2023
Honors: *Stetson Business Law Review*, Notes & Comments Editor
Dean's List, Spring 2021; Honor Roll, Fall 2020
Highest Grade Designation: Ethics & The Practice of Criminal Law
GPA: 3.278
Rank: 85/263 (Top 33%)

UNIVERSITY OF SOUTH FLORIDA, Tampa, FL
B.S., Finance, December 2017
GPA: 3.48
Honors: Florida Academic Scholarship Recipient; USF Director's Scholarship Recipient

EXPERIENCE

GREENBERG TRAURIG, Tampa, FL November 2020 – May 2021, April 2022 – Present
Litigation Paralegal/Law Clerk
Research and draft memoranda in support of motions regarding substantive and procedural issues, including complex discovery issues. Research expert witness testimony and *Daubert* challenges. Proofread court filings and ensure citations follow *The Bluebook*. Attend strategy calls with expert witnesses.

ASHLEY FURNITURE INDUSTRIES, Tampa, FL May 2021 – April 2022
Trademark & Licensing Paralegal
Conducted clearance searches in USPTO database (TESS) and common law searches for proposed trademarks. Prepared and filed Trademark applications with the USPTO.

ALLSTATE, Tampa, FL September 2018 – November 2020
Litigation Paralegal
Prepared responses to requests for production and interviewed clients for interrogatory answers. Requested medical records via subpoena. Scheduled independent medical examinations (IMEs).

DPW LEGAL, Wesley Chapel, FL March 2016 – November 2017
Paralegal/Legal Assistant
Scheduled hearings, depositions, and mediations. Reviewed citations to record on appeal in draft briefs for accuracy. Prepared Copyright and Trademark applications.

INTERESTS

Pickleball, investigative journalism, tropical houseplants

(/StudentSelfService/)

Madeleine J Voigt

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Law Sch Transcript w/Rank

Student Information | Degrees Awarded | Institution Credit | Transcript Totals | Course(s) in Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Madeleine J Voigt

Curriculum Information

Current Program :

Program	College	Major and Department
Juris Doctor	Law School	Law, Department not Declared

Degrees Awarded

Sought

Juris Doctor

Major

Law

Institution Credit

Term : Fall 2019-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1181	Law School-GULFPORT	LW	CONTRACTS	275	4.000	11.00	
LAW	1290	Law School-GULFPORT/TAMPA	LW	TORTS	275	4.000	11.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	8.000	22.00	2.750
Cumulative	8.000	8.000	8.000	8.000	22.00	2.750

Term : Spring 2020-Law

Term Comments

A global health em
ergency during this
term

required significan
t changes in course
delivery

for most courses. A
ll courses impacted
by the

change in delivery
were graded on a
pass/fail

system.

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1150	Law School-GULFPORT/TAMPA	LW	CIVIL PROCEDURE	P	4.000	0.00	
LAW	1270	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING I	P	4.000	0.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	0.000	0.00	
Cumulative	16.000	16.000	16.000	8.000	22.00	2.750

Term : Summer 2020-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1251	Law School-	LW	REAL	350	4.000	14.00	

	GULFPORT/TAMPA	PROPERTY

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	4.000	4.000	4.000	4.000	14.00	3.500
Cumulative	20.000	20.000	20.000	12.000	36.00	3.000

Term : Fall 2020-Law

Academic Standing	Additional Standing
Good Standing	Honor Roll

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1200	Law School-GULFPORT	LW	CRIMINAL LAW	375	4.000	15.00	
LAW	1275	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING II	275	3.000	8.25	
LAW	2350	Law School-DISTANCE LEARNING	LW	PROFESSIONAL RESPONSIBILITY	350	3.000	10.50	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	10.000	10.000	10.000	10.000	33.75	3.375
Cumulative	30.000	30.000	30.000	22.000	69.75	3.170

Term : Spring 2021-Law

Academic Standing	Additional Standing
Good Standing	Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1195	Law School-GULFPORT/TAMPA	LW	CONSTITUTIONAL LAW I	350	4.000	14.00	
LAW	2190	Law School-GULFPORT	LW	EVIDENCE	400	4.000	16.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	8.000	30.00	3.750
Cumulative	38.000	38.000	38.000	30.000	99.75	3.325

Term : Summer 2021-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3502	Law School-DISTANCE LEARNING	LW	FLORIDA CRIMINAL PROCEDURE	325	3.000	9.75	
LAW	3592	Law School-DISTANCE LEARNING	LW	INTERVIEWING AND COUNSELING	350	2.000	7.00	
LAW	3761	Law School-DISTANCE LEARNING	LW	NEGOTIATION AND MEDIATION	300	2.000	6.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	7.000	7.000	7.000	7.000	22.75	3.250
Cumulative	45.000	45.000	45.000	37.000	122.50	3.310

Term : Fall 2021-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3040	Law School-GULFPORT	LW	ADMINISTRATIVE LAW	275	3.000	8.25	
LAW	3154	Law School-GULFPORT	LW	BUSINESS ENTITIES	350	4.000	14.00	

LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00
LAW	3487	Law School-DISTANCE LEARNING	LW	FINANCIAL ADVOCACY	S	1.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	10.000	10.000	10.000	7.000	22.25	3.178
Cumulative	55.000	55.000	55.000	44.000	144.75	3.289

Term : Spring 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3090	Law School-DISTANCE LEARNING	LW	ADVANCED LEGAL RESEARCH	325	2.000	6.50	
LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00	
LAW	3190	Law School-DISTANCE LEARNING	LW	COMMERCIAL TRANSACTIONS	325	4.000	13.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	6.000	19.50	3.250
Cumulative	63.000	63.000	63.000	50.000	164.25	3.285

Term : Summer 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R